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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: February 23, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 6093 of February 12, 1990

181st Anniversary of the Birth of Abraham Lincoln

By the President of the United States of America

A Proclamation

A true friend of the common man and a courageous leader at our Nation's greatest hour of trial, Abraham Lincoln occupies a special place of honor in the hearts of all Americans. Each February 12, as we commemorate the anniversary of his birth, we celebrate the peace and unity of purpose President Lincoln reclaimed for this country—and the shining hope he restored to all mankind.

When he became President in 1861, Abraham Lincoln was faced with a grave crisis: seven States, determined to preserve the institution of slavery and to assert what they viewed as their sovereign rights, had seceded from the Union. After a military confrontation at Fort Sumter, the Civil War began.

Lincoln believed that the success of our Nation's great experiment in self-government depended on the strength and integrity of the Union and on the degree to which Americans, as well as the national Government, remained true to the ideals expressed at the Founding. Although the War tried his skills as President and tested whether a nation "so conceived and so dedicated" could long endure, his convictions proved unshakable. In a July 4th Address to the Congress, he declared that the War was nothing less than "a struggle for maintaining in the world, that form and substance of government whose leading object is to elevate the condition of men . . . to afford all an unfettered start, and a fair chance, in the race of life."

Abraham Lincoln knew that for the United States to endure, it must remain faithful to the noble ideal enshrined in our Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." Lincoln believed that excluding any human beings from this promise undermines the moral foundation on which our Nation rests. He had once argued that our Nation's Founding Fathers "meant to set up a standard maxim for a free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for . . . thereby constantly spreading and deepening its influence and augmenting the happiness and value of life to all people of all colors everywhere." Lincoln knew that our Nation must always strive to fulfill its great promise, or risk its very existence.

Throughout the course of the War, Lincoln remained fully committed to the idea of liberty under law. For him, striving to uphold the Constitution and protect the rights of individuals was not only compatible with preserving the Union, but essential to it. In 1864, when he was elected to a second term in office, Lincoln reflected aloud: "We cannot have free government without elections; and if the rebellion could force us to forego or postpone a national election, it might fairly claim to have already conquered and ruined us." The success of the electoral process reaffirmed Lincoln's conviction that the principles upon which our Nation was founded must—and could—withstand the fiery ordeal it now suffered. Lincoln's leadership throughout the Civil War was inspired by a firm belief in those principles.

Abraham Lincoln's aversion to the institution of slavery was known long before he took office. Perhaps it was his experience as a young man, clearing land on the frontier and working odd jobs while he studied law, that enabled him to see the injustice of earning one's bread as the fruit of another man's labor. Ultimately, however, Lincoln saw slavery as dehumanizing, a cruel contrast to the ideals expressed in our Nation's Declaration of Independence. In 1858, campaigning for the Senate, he reminded an audience at Edwardsville, Illinois, that our Nation's strength and purpose are found in the spirit that prizes liberty as the heritage of all men. "Destroy this spirit," the young statesman warned, "and you have planted the seeds of despotism at your own doors. . . . Accustomed to trample on the rights of others, you have lost the genius of your own independence and become the fit subjects of the first cunning tyrant who rises among you." Lincoln realized that slavery violently contradicted the shining promise of America. His issuance of the Emancipation Proclamation became a decisive factor in the Civil War—and one of the historic and crowning achievements of Lincoln's life.

Leading our country through the perilous years of civil war, Abraham Lincoln ensured its safe passage by remaining faithful to the principles upon which it was founded. Today, as we mark the anniversary of his birth, we are grateful for his courage and wisdom, and for his example.

With an unfailing commitment to justice and an equally profound sense of mercy and compassion, Lincoln exhorted his fellow Americans to act "with malice toward none, with charity for all." He cared for the Union and for the individual Americans of all races, all conditions, and all regions. In his eyes, the great experiment in self-government launched by our Nation's Founders represented "the last, best hope of Earth." Today, recalling the timeless spirit of his historic Gettysburg Address, let us rededicate ourselves to "the unfinished work" Abraham Lincoln so nobly advanced. As individuals and as a Nation, let us strive to be governed "by the better angels of our nature," always choosing the sure and righteous course marked for us by the Constitution and the Declaration of Independence. This is the cause for which Lincoln gave his life, and it is the cause that we, too, must represent in the world and carry on for the sake of generations yet unborn.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby urge all Americans to observe February 12, 1990—the 181st anniversary of the birth of Abraham Lincoln—with appropriate programs, ceremonies, and activities designed to honor his memory and to reaffirm our commitment to the ideals he so faithfully defended.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of February, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 90-3655
Filed 2-12-90; 4:13 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 141

Federal Claims Collection; Salary Offset

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: This part sets forth the Commodity Futures Trading Commission's policy and procedures which implement 5 U.S.C. 5514 and 5 CFR part 550, subpart K for the collection by administrative offset of a federal employee's salary with or without his/her consent to satisfy certain debts owed to the Federal government.

EFFECTIVE DATE: February 14, 1990.

FOR FURTHER INFORMATION CONTACT: David W. Kuhnsman, Esq., Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–9880.

SUPPLEMENTARY INFORMATION: Under the Debt Collection Act of 1982, when the head of a Federal agency determines that an employee of an agency is indebted to the United States or is notified by a head of another Federal agency that an agency employee is indebted to the United States, the employee's debt may be offset against his or her salary. Certain due process rights must be afforded to an employee before salary offset deductions begin. As is required by the Debt Collection Act of 1982, this regulation is consistent with salary offset regulations issued by the Office of Personnel Management as codified in 5 CFR part 550, subpart K.

Regulatory Flexibility Act; Paperwork Reduction Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., requires agencies to consider the impact of proposed rules on small entities. It is not anticipated that these new regulations dealing solely with internal rules governing Commodity Futures Trading Commission personnel will impose any new burden on small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rule promulgated herein will not have a significant economic impact on a substantial number of small entities.

Because the rule adopted herein does not contain a collection of information requirement, or an "information collection request" within the meaning of 44 U.S.C. 3502(4), the Commission has determined that the provisions of the Paperwork Reduction Act do not apply.

Waiver of Public Notice and Comment

These regulations are published in final form without the opportunity for public notice and comment because they relate to CFTC organization, procedure, and practice affecting its management and personnel.

List of Subjects in 17 CFR Part 141

Administrative practice and procedure, Compensation, Debt collection, Personnel.

Accordingly, the Commodity Futures Trading Commission amends 17 CFR by adding part 141 as follows:

PART 141—SALARY OFFSET

Authority: 5 U.S.C. 5514, E.O. 11609 (redesignated E.O. 12197), 5 CFR part 550, subpart K, and 7 U.S.C. 4a(j).

§ 141.1 Purpose and scope.

(a) This regulation provides procedures for the collection by administrative offset of a federal employee's salary without his/her consent to satisfy certain debts owed to the federal government. These regulations apply to employees of other federal agencies and current employees of the Commission who owe debts to the Commission and to current employees of the Commission who owe debts to other federal agencies. This regulation does not apply when the employee consents to recovery from his/her current pay account.

(b) This regulation does not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 et seq.;

(2) The Social Security Act, 42 U.S.C. 301 et seq.;

(3) The tariff laws of the United States; or

(4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) This regulation does not apply to any adjustment to pay arising out of an employee's selection of coverage or a change in coverage under a federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) This regulation does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act, 31 U.S.C. 3711 et seq., 4 CFR parts 101 through 105, 45 CFR part 1177.

(e) This regulation does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774 or 32 U.S.C. 716 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office in accordance with General Accounting Office procedures. This regulation does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected. Neither the requesting of a waiver nor the filing of a claim with the General Accounting Office will affect the amount or validity of the debt being collected until a waiver has been granted or the debt has been determined to be for an incorrect amount or invalid.

(f) Matters not addressed in these regulations should be reviewed in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 et seq.

§ 141.2 Definitions.

For the purposes of this part the following definitions will apply:

"Agency" means an executive agency as defined at 5 U.S.C. 105 including the U.S. Postal Service, the U.S. Postal Commission, a military department as defined at 5 U.S.C. 102, an agency or court in the judicial branch, an agency of the legislative branch including the U.S. Senate and House of Representatives and other independent establishments that are entities of the Federal government.

"Creditor agency" means the agency to which the debt is owed.

"Debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

"Disposable pay" means the amount that remains from an employee's federal pay after required deductions for social security, federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, federal employment taxes, and any other deductions that are required to be withheld by law.

"Hearing official" means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and who renders a decision on the basis of such hearing. A hearing official shall be an impartial member of the Office of the Executive Director not under the supervision or control of the head of the Commission.

"Paying agency" means the agency that employs the individual who owes the debt and authorizes the payment of his/her current pay.

"Salary offset" means an administrative offset to collect a debt pursuant to 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his/her consent.

§ 141.3 Applicability.

These regulations are to be followed when:

(a) The Commission is owed a debt by an individual currently employed by another federal agency;

(b) The Commission is owed a debt by an individual who is a current employee of the Commission;

(c) The Commission employs an individual who owes a debt to another federal agency.

§ 141.4 Notice requirements.

(a) Deductions shall not be made unless the employee is provided with written notice of the debt at least 30 days before salary offset commences.

(b) The written notice shall contain:

(1) A statement that the debt is owed and an explanation of its nature, and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of interest, penalties, and administrative charges, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards at 4 CFR 101.1 et seq.;

(5) The employee's right to inspect, request, and receive a copy of government records relating to the debt;

(6) The opportunity to establish a written schedule for the voluntary repayment of the debt;

(7) The right to a hearing conducted by an impartial hearing official;

(8) The methods and time period for petitioning for hearings;

(9) A statement that the timely filing of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing will be issued not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) A statement that knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under chapter 75 of 5 U.S.C., 5 CFR part 752, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority; or

(iii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority.

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

§ 141.5 Hearing.

(a) *Request for hearing.* (1) An employee must file a petition for a hearing in accordance with the instructions outlined in the Commission's notice to offset.

(2) A hearing may be requested by filing a written petition addressed to the Executive Director stating why the employee disputes the existence or amount of the debt. The petition for a hearing must be received by the Executive Director no later than fifteen (15) calendar days after the date of the notice to offset unless the employee can show good cause for failing to meet the deadline date.

(b) *Hearing procedures.* (1) The hearing will be presided over by a impartial hearing official.

(2) The hearing shall conform to procedures contained in the Federal Claims Collection Standards 4 CFR 102.3(c). The burden shall be on the employee to demonstrate that the existence or the amount of the debt is in error.

§ 141.6 Written decision.

(a) The hearing official shall issue a written opinion no later than 60 days after the hearing.

(b) The written opinion will include a statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings and conclusions; the amount and validity of the debt, and the repayment schedule.

§ 141.7 Coordinating offset with another Federal agency.

(a) *The Commission as the creditor agency.* When the Commission determines that an employee of another federal agency owes a delinquent debt to the Commission, the Commission shall as appropriate:

(1) Arrange for a hearing upon the proper petitioning by the employee;

(2) Certify to the paying agency in writing that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the Government's right to collect the

debt accrued, and that Commission regulations for salary offset have been approved by the Office of Personnel Management;

(3) If collection must be made in installments, the Commission must advise the paying agency of the amount or percentage of disposable pay to be collected in each installment;

(4) Advise the paying agency of the actions taken under 5 U.S.C. 5514(b) and provide the dates on which action was taken unless the employee has consented to salary offset in writing or signed a statement acknowledging that the Commission has complied with the procedures required by law. The written consent or acknowledgment must be sent to the paying agency;

(5) If the employee is in the process of separating, the Commission must submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee, and send a copy of the certification and notice of the employee's separation to the Commission. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund or similar payments, it must certify to the agency responsible for making such payments the amount of the debt and that the provisions of 5 CFR 550.1108 have been followed; and

(6) If the employee has already separated and all payments due from the paying agency have been paid, the Commission may request, unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset.

(b) *The Commission as the paying agency.* (1) Upon receipt of a properly certified debt claim from another agency, deductions will be scheduled to begin at the next established pay interval. The employee must receive written notice from the Commission that the Commission has received a certified debt claim from the creditor agency, the amount of the debt, the date salary offset will begin, and the amount of the deduction(s). The Commission shall not review the merits of the creditor agency's determination of the validity or the amount of the certified claim.

(2) If the employee transfers to another agency after the creditor agency has submitted its debt claim to the Commission and before the debt is collected completely, the Commission must certify the total amount collected. One copy of the certification must be furnished to the employee. A copy must be furnished the creditor agency with notice of the employee's transfer.

§ 141.8 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Commission's notice of intention to offset as provided in § 141.4. Debts will be collected in one lump sum where possible. If the employee is financially unable to pay in one lump sum, collection must be made in installments.

(b) Debts will be collected by deduction at officially established pay intervals from an employee's current pay account unless alternative arrangements for repayment are made.

(c) Installment deductions will be made over a period not greater than the anticipated period of employment. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. The deduction for the pay intervals for any period must not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(d) Unliquidated debts may be offset against any financial payment due to a separated employee including but not limited to final salary or leave payments in accordance with 31 U.S.C. 3716.

§ 141.9 Refunds.

(a) The Commission will refund promptly any amounts deducted to satisfy debts owed to the Commission when the debt is waived, found not owed to the Commission or when directed by an administrative or judicial order.

(b) The creditor agency will promptly return any amounts deducted by the Commission to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order.

(c) Unless required by law, refunds under this subsection shall not bear interest.

§ 141.10 Statute of limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 141.11 Non-waiver of rights.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutes or contract(s) to the contrary.

§ 141.12 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs in accordance with the Federal Claims Collection Standards, 4 CFR 102.13.

Issued in Washington, DC, on February 7, 1990. By the Commission

Jean A. Webb,

Secretary of the Commission, Commodity Futures Trading Commission.

[FR Doc. 90-3343 Filed 2-13-90; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Approval of Illinois Abandoned Mine Land Reclamation Plan Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Illinois Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Illinois AMLR plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment allows the Illinois Abandoned Mined Lands Reclamation Council (the Council) to perform non-coal reclamation within prescribed limitations. After opportunity for public comment and review of the amendment, the Deputy Director has determined that the Illinois amendment meets the requirements of the Surface Mining Control and Reclamation Act and the Secretary's regulations at 30 CFR part 884

EFFECTIVE DATE: February 14, 1990.

ADDRESSES: Copies of the full text of the amendment are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 600 E. Monroe, Room 20,

Springfield, Illinois 62701, Telephone: (217) 492–4495.
Illinois Abandoned Mined Land Reclamation Council, 928 S. Spring, Springfield, Illinois 62704, Telephone: (217) 782–0588.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office, (217) 492–4495.

SUPPLEMENTARY INFORMATION:.

I. Background

Title IV of SMCRA, Public Law 95–87, 30 U.S.C. 1201 *et seq.*, establishes an AMLR program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon coal production. Lands and waters eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State/Tribe or Federal law. Title IV of SMCRA establishes the conditions under which States/Tribes may obtain primary authority to implement this reclamation program.

The Secretary of the Interior approved the Illinois AMLR plan effective June 1, 1982. Information pertinent to the general background of the Illinois AMLR plan submission, as well as the Secretary's findings and the disposition of comments can be found in the June 1, 1982, **Federal Register** (47 FR 23886–23889). A subsequent program amendment approved on June 11, 1984, can be found in the June 11, 1984, **Federal Register** (49 FR 24019–24021).

Information concerning the previously approved plan and amendments may be obtained from the agency offices listed under "**ADDRESSES.**"

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR part 884). The regulations provide that a State may submit to OSM proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, OSM's Deputy Director for Operations and Technical Services (OTS) must follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision.

II. Discussion of Proposed Amendment

By letter dated September 6, 1989, the State of Illinois submitted an amendment to its AMLR plan. The proposed amendment consists of the addition of a section 2.11 to the Abandoned Mined Lands and Water Reclamation Act (Ill. Rev. Stat. 1987, Ch. 96½, par. 8001.01 *et seq.*, as amended by P.A. 86–175). This new Section provides for the reclamation of non-coal sites involving the protection of the public health and safety. It recognizes that open and abandoned tunnels, shafts, and entryways and abandoned and deteriorating equipment, structures, and facilities resulting from non-coal mining operations constitute a hazard to the public health and safety.

The amendment to the Illinois AMLR plan also proposes certain funding limitations. Expenditures are not to exceed 2 percent of the Council's annual budget and all non-coal expenditures are to be made within the next 5 years.

OSM announced receipt of the proposed amendment in the December 26, 1989, **Federal Register** (54 FR 52955–52956), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on its substantive adequacy. No public comments were received as of January 25, 1990, the close of the public comment period. Since no one requested an opportunity to testify at a public hearing, the scheduled hearing was cancelled.

III. Deputy Director's Findings

In accordance with section 405 of SMCRA, the Deputy Director for OTS finds that Illinois has submitted an amendment to its Abandoned Mine Land Reclamation Plan and has determined pursuant to 30 CFR 884.15, that:

1. The State provided adequate notice and opportunity for public comment in the development of the amendment and that the record does not reflect major unresolved controversies.
2. Views of other Federal agencies having an interest in the plan have been solicited and considered.
3. The State has the legal authority, policies and administrative structure necessary to implement the amendment.
4. The plan amendment meets all requirements of the OSM, AMLR program provisions.
5. The State has an approved Surface Mining Regulatory Program.
6. The proposed amendment is in compliance with all applicable State and Federal laws and regulations.

Under SMCRA, OSM codifies the approved requirements of individual States/Tribes, including decisions on State/Tribe reclamation plans and amendments, under 30 CFR parts 900 to 950. Provisions relating to Illinois are found in 30 CFR part 913. Based on the findings above, the Deputy Director for OTS is amending 30 CFR 913 to codify the approval of the Illinois amendment of September 6, 1989.

IV. Public Comments

As discussed in the section of this notice entitled "Discussion of Proposed Amendment," OSM solicited public comment and provided opportunity for a public hearing on the proposed amendment. No public comments were received as of January 25, 1990, the close of the public comment period. Since no one requested an opportunity to testify at a public hearing, the scheduled hearing was cancelled.

In accordance with 30 CFR 884.14, OSM solicited the views of other Federal agencies having an interest in the amendment. The U.S. Fish and Wildlife Service responded on October 23, 1989, and concurred with the proposal provided site evaluations were completed on all sites having tunnels, shafts, or entryways. The evaluations would address the presence of, or use by, Federally-listed endangered species, such as the Indiana bat or gray bat, as roost sites. This concern is addressed routinely by the Council through their grant application process prior to funding of projects, therefore no changes from the proposal are required.

V. Deputy Director's Decision

Based upon the findings enumerated above, the Deputy Director for OTS is approving the Illinois amendment. A copy of the approved amendment can be obtained by contacting the offices listed under "**ADDRESSES**".

VI. Procedural matters

1. Federal Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507 et seq.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On November 23, 1987, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or disapproval of State/Tribe AMLR reclamation plans and amendments. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). No burden will be

imposed upon entities operating in compliance with the Act.

3. National Environmental Policy Act

Approval of State/Tribe AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 6, appendix 8, paragraph 8.4B(29).

EFFECTIVE DATE: February 14, 1990. Under 5 U.S.C. 553(d), a rule may not be made effective less than 30 days after publication, unless, among other things, good cause exists and is published with the rule. Good cause exists to make the final rule effective upon publication because: (1) The Illinois Abandoned Mine Lands Reclamation Council is fully staffed and currently administering the abandoned mine land reclamation program; and (2) OSM wishes to expedite the implementation of the revised AMLR plan amendment.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Under ground mining.

Accordingly, 30 CFR part 913 is amended as set forth below.

Dated: February 9, 1990.

W. Hord Tipton,

Deputy Director, Operations and Technical Services.

PART 913—ILLINOIS

1. The authority citation for part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.;* and Pub. L. 100–34.

2. Section 913.20 is amended by revising the introductory paragraph to read as follows:

§ 913.20 Approval of the Illinois Abandoned Mine Land Reclamation Plan.

The Illinois Abandoned Mine Land Reclamation Plan submitted on July 20, 1980, is approved effective June 1, 1982. (47 FR 23886 23889, June 1, 1982)

3. A new § 913.25 is added to read as follows:

§ 913.25 Approval of Abandoned Mine Land Reclamation Plan Amendments.

(a) The Illinois Abandoned Mine Land Reclamation Plan amendment submitted on January 19, 1984, is approved effective June 11, 1984. (49 FR 24019–24021, June 11, 1984)

(b) The Illinois Abandoned Mine Land Reclamation Plan amendment submitted on September 6, 1989, is approved effective February 14, 1990. Copies of the approved Illinois Abandoned Mine Land Reclamation Plan, and amendments, are available at the following locations:

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 600 East Monroe, Room 20, Springfield, Illinois 62701

Illinois Abandoned Mine Lands Reclamation Council, 928 South Spring Street, Springfield, Illinois 62704.

[FR Doc. 90–3471 Filed 2–13–90; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–3682–6]

Standards of Performance for New Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On March 1, 1989 (54 FR 8564), EPA proposed amendments to divide Method 3 into Method 3, Gas Analysis for the Determination of Dry Molecular Weight, and Method 3B, Gas Analysis for the Determination of Emission Rate Correction Factor or Excess Air and to amend references in Subparts D, Da, E, Z, and BB in order to reduce the confusion associated with Method 3. Today's action promulgates these amendments.

DATES: *Effective date.* February 14, 1990.

Judicial Review. Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Docket.* Docket No. A–88–30, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket (LE–131), Room M–1500, 1st Floor, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Candace Sorrell or Roger Shigehara, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–1064.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

At the present, Method 3 entitled "Gas Analysis for Carbon Dioxide, Oxygen, Excess Air, and Dry Molecular Weight," has two procedures—one for determining molecular weight and the other for determining emission rate and excess air calculations. Method 3 is applicable to fossil fuel combustion processes and other processes in which compounds other than carbon dioxide, oxygen, carbon monoxide, and nitrogen are not present in concentrations sufficient to affect the results. Since Method 3 is required during the compliance test for most sources and because the two procedures require different degrees of accuracy, it is confusing as to which procedure should be used during the test. This situation is awkward when making references in subparts; therefore, the method is being divided into Method 3 entitled "Gas Analysis for the Determination of Dry Molecular Weight" and Method 3B entitled "Gas Analysis for the Determination of Emission Rate Correction Factor or Excess Air. In addition Subparts D, Da, Db, E, Z, and BB are being revised to reflect the addition of Method 3B. This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, this rulemaking amends test procedures to which the affected facilities are already subject.

II. Public Participation

The opportunity to hold a public hearing on April 17, 1989 at 10 a.m. was presented in the proposal notice, but no one desired to make an oral presentation. The public comment period was from March 1, 1989 to May 15, 1989. Two letter were received.

III. Significant Comments and Changes to the Proposed Amendments

The two comment letters on the proposed amendments were from industry and a utility group. The major comments and EPA responses are summarized below.

One commenter supported the revisions and agreed that the revisions were appropriate.

The second commenter recommended that Method 3B be referenced in the following places: §§ 60.45(c)(1), 60.47a(i)(1), 60.47(j)(1), 60.46b(d)(1), 60.47b(b)(2), Section 7.4 of Performance

Specification 2 (PS 2), and Section 3.2 of Performance Specification 3 (PS 3).

Section 60.45(c)(1), Section 60.47a(i)(1), Section 7.4 of PS 2, and Section 3.2 of PS 3 state that approved alternative methods to Method 3 may be used. Since Method 3B is proposed as an approved alternative in the applicable subparts (including subparts D and Da), EPA does not feel it is appropriate to reference Method 3B in the above mentioned sections.

Since § 60.47(j)(1) does not exist, EPA believes the commenter was referring to § 60.47a(j)(1). The EPA agrees that Method 3B should be referenced in §§ 60.47a(j)(1) and 60.47b(b)(2) and the proposal was modified to make this reference.

The EPA does not feel it is appropriate to reference Method 3B in § 60.46b(b)(1) as the commenter suggested. Method 3 is the correct method to use when conducting a Method 5 or Method 17 test.

As a result of reviewing 40 CFR part 60 to ensure that all sections are identified where revisions are needed, §§ 60.46(d)(1)(ii) and 60.46(d)(4) have been revised to use Method 3B. Also, some of the section numbers listed in the proposal have been revised due to a final rule published February 14, 1989 entitled "Amendments to Test Methods and Procedures" (54 FR 6660).

IV. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated test method revisions and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (Section 307(d)(7)(A)).

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act (RFA) of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a RFA analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, an analysis has not been conducted.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 60

Air Pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, Incinerators, Kraft pulp mills.

Dated: February 1, 1990.

William K. Reilly,

Administrator.

40 CFR part 60 is amended as follows:

1. The authority citation part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

§§ 60.46, 60.47a, 60.48a, 60.54, 60.266, and 60.285 [Amended]

2. In §§ 60.46(b)(2)(ii), 60.46(b)(4)(ii), 60.46(b)(5)(ii), 60.46(d)(l)(ii), 60.46(d)(4), 60.47a(h)(3), 60.48a(b)(2)(ii), 60.54(b)(3), 60.54(c)(1)(iii), 60.266(c)(5), 60.285(b)(2), and 60.285(d)(2), the words "Method 3" are revised to read "Method 3B".

§ 60.46 [Amended]

3. In § 60.46(d)(6), the words "or 3B" is inserted between "Method 3A" and "may" to read "* * * Method 3A or 3B may * * *".

4. Section 60.46 is amended by adding paragraph (d)(7) as follows:

§ 60.46 Test methods and procedures.

(d) * * *

(7) For Method 3B, Method 3A may be used.

§ 60.47a [Amended]

5. In § 60.47a(j)(1) the words "or 3B" is inserted between "Methods 6 and 3" and "data" to read "* * * Methods 6 and 3 or 3B data * * *".

§ 60.47a [Amended]

6. In Section 60.47a(j)(3) the words "or 3B" is inserted between "Method 3A" and "may" to read "* * * Method 3A or 3B may * * *".

7. Section 60.47a is amended by adding paragraph (j)(4) as follows:

§ 60.47a Emission monitoring.

(j) * * *

(4) For Method 3B, Method 3A may be used.

§ 60.47 [Amended]

8. In § 60.47(b)(2) the words "or 3B" is inserted between "Methods 6 or 3" and "or" to read "* * * Methods 6 and 3 or 3B or * * *".

§ 60.54 [Amended]

9. In § 60.54(c)(2)(ii), the words "Equation 3–1 of Method 3" are revised to read "Equation 3B–3 of Method 3B".

Appendix A—[Amended]

10. By revising method 3 to appendix A to part 60, to read as follows:

Method 3—Gas Analysis for the Determination of Dry Molecular Weight

1. Applicability and Principle

1.1 Applicability.

1.1.1 This method is applicable for determining carbon dioxide (CO_2) and oxygen (O_2) concentrations and dry molecular weight of a sample from a gas stream of a fossil-fuel combustion process. The method may also be applicable to other processes where it has been determined that compounds other than CO_2, O_2, carbon monoxide (CO), and nitrogen (N_2) are not present in concentrations sufficient to affect the results.

1.1.2 Other methods, as well as modifications to the procedure described herein, are also applicable for some or all of the above determinations. Examples of specific methods and modifications include: (1) A multi-point sampling method using an Orsat analyzer to analyze individual grab samples obtained at each point; (2) a method using CO_2 or O_2 and stoichiometric calculations to determine dry molecular weight; and (3) assigning a value of 30.0 for dry molecular weight, in lieu of actual measurements, for processes burning natural gas, coal, or oil. These methods and modifications may be used, but are subject to the approval of the Administrator, U.S. Environmental Protection Agency (EPA).

1.1.3 Note. Mention of trade names or specific products does not constitute endorsements by EPA.

1.2 Principle. A gas sample is extracted from a stack by one of the following methods: (1) Single-point, grab sampling; (2) single-point, integrated sampling; or (3) multi-point, integrated sampling. The gas sample is analyzed for pecent CO_2, percent O_2, and if necessary, for percent CO. For dry molecular weight determination, either an Orsat or a Fyrite analyzer may be used for the analysis.

2. Apparatus

As an alternative to the sampling apparatus and systems described herein, other sampling systems (e.g., liquid displacement) may be used, provided such systems are capable of obtaining a representative sample and maintaining a constant sampling rate, and are, otherwise, capable of yielding acceptable results. Use of

such systems is subject to the approval of the Administrator.

2.1 Grab Sampling (Figure 3–1).

2.1.1 Probe. Stainless steel or borosilicate glass tubing equipped with an in-stack or out-stack filter to remove particulate matter (a plug of glass wool is satisfactory for this purpose). Any other materials, inert to O_2, CO_2, CO, and N_2 and resistant to temperature at sampling conditions, may be used for the probe. Examples of such materials are aluminum, copper, quartz glass, and Teflon.

2.1.2 Pump. A one-way squeeze bulb, or equivalent, to transport the gas sample to the analyzer.

2.2 Integrated Sampling (Figure 3–2).

2.2.1 Probe. Same as in Section 2.1.1.

2.2.2 Condenser. An air-cooled or water-cooled condenser, or other condenser no greater than 250 ml that will not remove O_2, CO_2, CO, and N_2, to remove excess moisture which would interfere with the operation of the pump and flowmeter.

2.2.3 Valve. A needle valve, to adjust sample gas flow rate.

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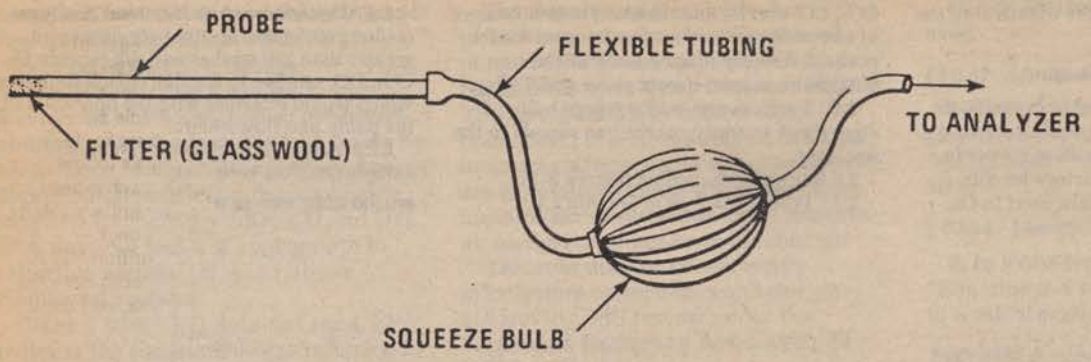

Figure 3-1. Grab-sampling train.

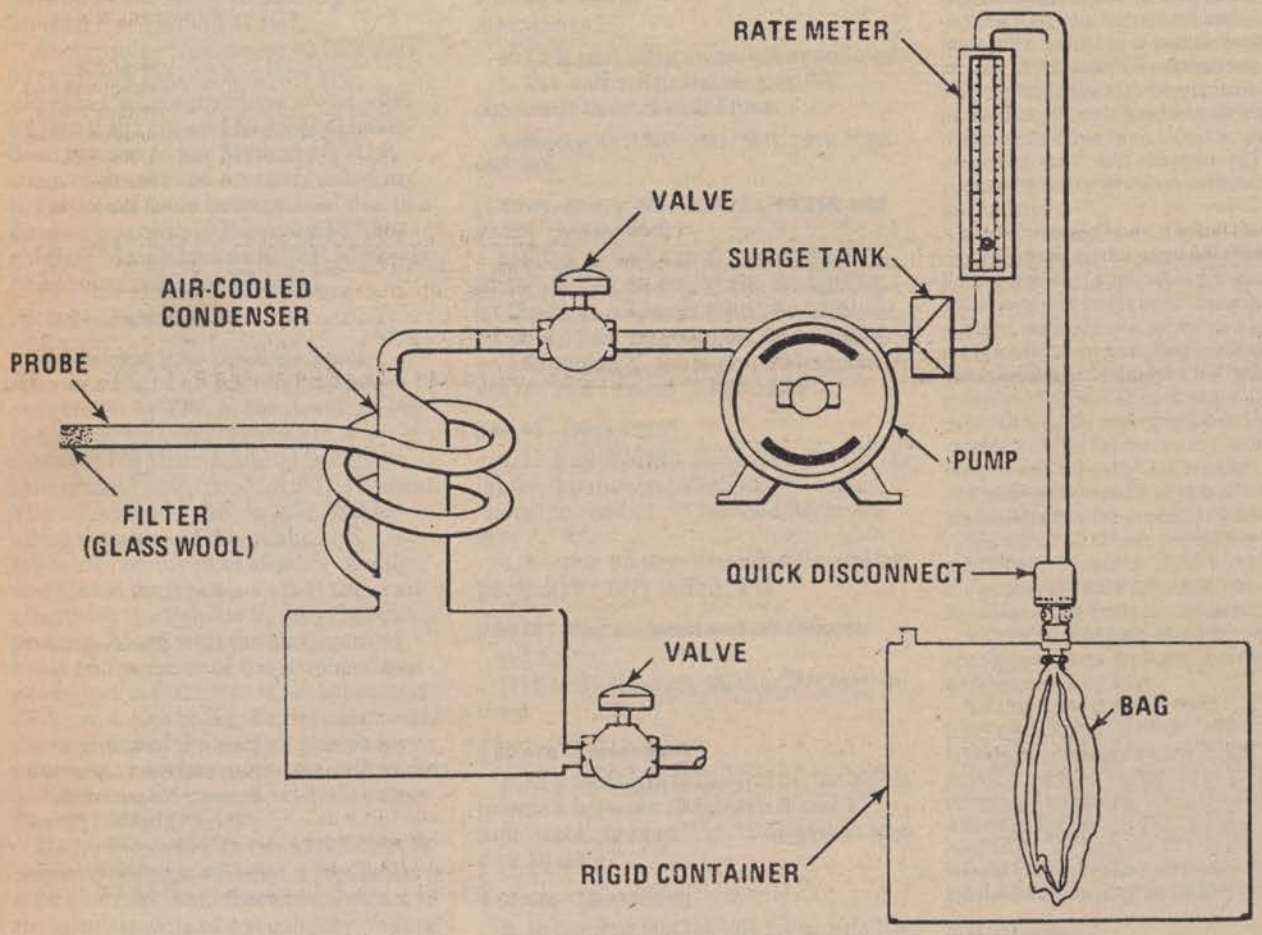

Figure 3-2. Integrated gas-sampling train.

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2.2.4 Pump. A leaf-free, diaphragm-type pump, or equivalent, to transport sample gas to the flexible bag. Install a small surge tank between the pump and rate meter to eliminate the pulsation effect of the diaphragm pump on the rotameter.

2.2.5 Rate Meter. A rotameter, or equivalent rate meter, capable of measuring flow rate to within 2 percent of the selected flow rate. A flow rate range of 500 to 1000 cc/min is suggested.

2.2.6 Flexible Bag. Any leak-free plastic (e.g., Tedlar, Mylar, Teflon) or plastic-coated aluminum (e.g., aluminized Mylar) bag, or equivalent, having a capacity consistent with the selected flow rate and time length of the test run. A capacity in the range of 55 to 90 liters is suggested. To leak check the bag, connect it to a water manometer, and pressurize the bag to 5 to 10 cm H_2O (2 to 4 in. H_2O). Allow to stand for 10 minutes. Any displacement in the water manometer indicates a leak. An alternative leak-check method is to pressurize the bag to 5 to 10 cm (2 to 4 in.) H_2O and allow to stand overnight. A deflated bag indicates a leak.

2.2.7 Pressure Gauge. A water-filled U-tube manometer, or equivalent, of about 30 cm (12 in.), for the flexible bag leak check.

2.2.8 Vacuum Gauge. A mercury manometer, or equivalent, of at least 760 mm (30 in.) Hg, for the sampling train leak check.

2.3 Analysis. An Orsat or Fyrite type combustion gas analyzer. For Orsat and Fyrite analyzer maintenance and operation procedures, follow the instructions recommended by the manufacturer, unless otherwise specified herein.

3. Single-Point, Grab Sampling and Analytical Procedure

3.1 The sampling point in the duct shall either be at the centroid of the cross section or at a point no closer to the walls than 1.00 m (3.3 ft), unless otherwise specified by the Administrator.

3.2 Set up the equipment as shown in Figure 3–1, making sure all connections ahead of the analyzer are tight. If an Orsat analyzer is used, it is recommended that the analyzer be leak checked by following the procedure in Section 6; however, the leak check is optional.

3.3 Place the probe in the stack, with the tip of the probe positioned at the sampling point; purge the sampling line long enough to allow at least five exchanges. Draw a sample into the analyzer, and immediately analyze it for percent CO_2 and percent O_2. Determine the percentage of the gas that is N_2 and CO by subtracting the sum of the percent CO_2 and percent 0_2O from 100 percent. Calculate the dry molecular weight as indicated in Section 7.2.

3.4 Repeat the sampling, analysis, and calculation procedures until the dry molecular weights of any three grab samples differ from their mean by no more than 0.3 g/g-mole (0.3 lb/lb-mole). Average these three molecular weights, and report the results to the nearest 0.1 g/g-mole (0.1 lb/lb-mole).

4. Single-Point, Integrated Sampling and Analytical Procedure

4.1 The sampling point in the duct shall be located as specified in Section 3.1.

4.2 Leak check (optional) the flexible bag as in Section 2.2.6. Set up the equipment as shown in Figure 3–2. Just before sampling, leak check (optional) the train by placing a vacuum gauge at the condenser inlet, pulling a vacuum of at least 250 mm Hg (10 in. Hg), plugging the outlet at the quick disconnect, and then turning off the pump. The vacuum should remain stable for at least 0.5 minute. Evacuate the flexible bag. Connect the probe, and place it in the stack, with the tip of the probe positioned at the sampling point; purge the sampling line. Next, connect the bag, and make sure that all connections are tight.

4.3 Sample at a constant rate. The sampling run should be simultaneous with, and for the same total length of time as, the pollutant emission rate determination. Collection of at least 30 liters (1.00 ft^3) of sample gas is recommended; however, smaller volumes may be collected, if desired.

4.4 Obtain one integrated flue gas sample during each pollutant emission rate determination. Within 8 hours after the sample is taken, analyze it for percent CO_2 and percent O_2 using either an Orsat analyzer or a Fyrite type combustion gas analyzer. If an Orsat analyzer is used, it is recommended that Orsat leak check described in Section 6, be performed before this determination; however, the check is optional. Determine the percentage of the gas that is N_2 and CO by subtracting the sum of the percent CO_2 and percent 0 from 100 percent. Calculate the dry molecular weight as indicated in Section 7.2.

4.5 Repeat the analysis and calculation procedures until the individual dry molecular weights for any three analyses differ from their mean by no more than 0.3 g/g-mole (0.3 lb/lb-mole). Average these three molecular weights, and report the results to the nearest 0.1 g/g-mole (0.1 lb/lb-mole).

5. Multi-Point, Integrated Sampling and Analytical Procedure

5.1 Unless otherwise specified by the Administrator, a minimum of eight traverse points shall be used for circular stacks having diameters less than 0.61 m (24 in.), a minimum of nine shall be used for rectangular stacks having equivalent diameters less than 0.61 m (24 in.), and a minimum of 12 traverse points shall be used for all other cases. The traverse points shall be located according to Method 1. The use of fewer points is subject to approval of the Administrator.

5.2 Follow the procedures outlined in Sections 4.2 through 4.5, except for the following: Traverse all sampling points, and sample at each point for an equal length of time. Record sampling data as shown in Figure 3–3.

Time	Traverse pt.	Q, liter/min	% dev.*
Average			

* % dev. $= (Q - Q_{avg})/Q_{avg} \times 100$ (Must be $< |10\%|$)

Figure 3–3. Sampling rate data.

6. Leak-Check Procedure for Orsat Analyzer

Moving an Orsat analyzer frequently causes it to leak. Therefore, an Orsat analyzer should be thoroughly leak checked on site before the flue gas sample is introduced into it. The procedure for leak checking an Orsat analyzer is as follows:

6.1 Bring the liquid level in each pipette up to the reference mark on the capillary tubing, and then close the pipette stopcock.

6.2 Raise the leveling bulb sufficiently to bring the confining liquid meniscus onto the graduated portion of the burette, and then close the manifold stopcock.

6.3 Record the menisus position.

6.4 Observe the menisus in the burette and the liquid level in the pipette for movement over the next 4 minutes.

6.5 For the Orsat analyzer to pass the leak check, two conditions must be met:

6.5.1 The liquid level in each pipette must not fall below the botton of the capillary tubing during this 4-minute interval.

6.5.2 The menisus in the burette must not change by more than 0.2 ml during this 4-minute interval.

6.6 If the anlyzer fails the leak-check procedure, check all rubber connections and stopcocks to determine whether they might be the cause of the leak. Disassemble, clean, and regrease leaking stopcocks. Replace leaking rubber connections. After the analyzer is reassembled, repeat the lead-check procedure.

7. Calculations

7.1 Nomenclature

M_d = Dry molecular weight, g/g-mole (1b/1b-mole).
$\%CO_2$ = Percent CO_2 by volume, dry basis.
$\%O_2$ = Percent O_2 by volume, dry basis.
%CO = Percent CO by volume, dry basis.
$\%N_2$ = Percent N_2 by volume, dry basis.
0.280 = Molecular weight of N_2 or CO, divided by 100.
0.320 = Molecular wight of O_2 divided by 100.
0.440 = Molecular weight of CO_2 divided by 100.

7.2 Dry Molecular Weight. Use Equation 3–1 to calculate the dry molecular weight of the stack gas.

$$M_d = 0.440(\%CO_2) + 0.320\ (\%O_2) + 0.280(\%N_2 + \%CO) \qquad \text{Eq. 3–1}$$

Note. The above equation does not consider argon in air (about 0.9 percent, molecular weight of 39.9). A negative error of about 0.4 percent is introduced. The tester may choose to include argon in the analysis using procedures subject to approval of the Administrator.

B. Bibliography

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5. Shigehara, R.T., R. M. Neulicht, and W.S. Smith. Validating Orsat Analysis Data from Fossil Fuel-Fired Units. Stack Sampling News. *4*(2):21–26. August 1976.

Appendix A—[Amended]

11. By adding Method 3B to appendix A to part 60 to read as follows:

Method 3B—Gas Analysis for the Determination of Emission Rate Correction Factor or Excess Air

1. Applicability and Principle

1.1 Applicability

1.1.1 This method is applicable for determining carbon dioxide (CO_2), oxygen (O_2), and carbon monoxide (CO) concentrations of a sample from a gas stream of a fossil-fuel combustion provess for excess air or emission rate correction factor calculations.

1.1.2 Other methods, as well as modifications to the procedure described herein, are also applicable for all of the above determinations. Examples of specific methods and modifications include: (1) A multi-point sampling method using an Orsat analyzer to analyze individual grab samples obtained at each point, and (2) a method using CO_2 or O_2 and stoichiometric calculations to determine excess air. These methods and modifications may be used, but are subject to the approval of the Administrator, U.S. Environmental Protection Agency (FPA).

1.1.3 Note. Mention of trade names or specific products does not constitute endorsement by EPA.

1.2 Principle. A gas sample is extracted from a stack by one of the following methods: (1) Single-point, grab sampling; (2) single-point, integrated sampling; or (3) multi-point, integrated sampling. The gas sample is analyzed for percent CO_2 percent O_2, and, if necessary, percent CO. An Orsat analyzer must be used for excess air or emission rate correction factor determinations.

2. Apparatus

The alternative sampling systems are the same as those mentioned in Section 2 of Method 3.

2.1 Grab Sampling and Integrated Sampling. Same as in Sections 2.1 and 2.2, respectively, of Method 3.

2.2 Analysis. An Orsat analyzer only. For low CO_2 (less than 4.0 percent) or high O_2 (greater than 15.0 percent) concentrations, the measuring burette of the Orsat must have at least 0.1 percent subdivisions. For Orsat maintenance and operation procedures, follow the instructions recommended by the manufacturer, unless otherwise specified herein.

3. Procedures

Each of the three procedures below shall be used only when specified in an applicable subpart of the standards. The use of these procedures for other purposes must have specific prior approval of the Adminsitrator.

Note.—A Fyrite-type combustion gas analyzer is not acceptable for excess air or emission rate correction factor determinations, unless approved by the Administrator. If both percent CO_2 and percent O_2 are measured, the analytical results of any of the three procedures given below may be used for calculating the dry molecular weight (see Method 3).

3.1 Single-Point, Grab Sampling and Analytical Procedure.

3.1.1 The sampling point in the duct shall be as described in Section 3.1 of Method 3.

3.1.2 Set up the equipment as shown in Figure 3–1 of Method 3, making sure all connections ahead of the analyzer are tight. Leak check the Orsat analyzer according to the procedure described in Section 6 of Method 3. This leak check is mandatory.

3.1.3 Place the probe in the stack, with the tip of the probe positioned at the sampling point; purge the sampling line long enough to allow at least five exchanges. Draw a sample into the analyzer. For emission rate correction factor determinations, immediately analyze the sample, as outlined in Sections 3.1.4 and 3.1.5, for percent CO_2 or percent O_2. If excess air is desired, proceed as follows: (1) immediately analyze the sample, as in Sections 3.1.4 and 3.1.5, for percent CO_2, O_2, and CO; (2) determine the percentage of the gas that is N_2 by subtracting the sum of the percent CO_2, percent O_2, and percent CO from 100 percent, and (3) calculate percent excess air as outlined in Section 4.2.

3.1.4 To ensure complete absorption of the CO_2, O_2, or if applicable, CO, make repeated passes through each absorbing solution until two consecutive readings are the same. Several passes (three or four) should be made between readings. (If constant readings cannot be obtained after three consecutive readings, replace the absorbing solution.)

Note.—Since this single-point, grab sampling and analytical procedure is normally conducted in conjunction with a single-point, grab sampling and analytical procedure for a pollutant, only one analysis is ordinarily conducted. Therefore, great care must be taken to obtain a valid sample and analysis. Although in most cases, only CO_2 or O_2 is required, it is recommended that both CO_2 and O_2 be measured, and that Section 3.4 be used to validate the analytical data.

3.1.5 After the analysis is completed, leak check (mandatory) the Orsat analyzer once again, as described in Section 6 of Method 3. For the results of the analysis to be valid, the Orsat analyzer must pass this leak test before and after the analysis.

3.2 Single-Point, Integrated Sampling and Analytical Procedure.

3.2.1 The sampling point in the duct shall be located as specified in Section 3.1.1.

3.2.2 Leak check (mandatory) the flexible bag as in Section 2.2.6 of Method 3. Set up the equipment as shown in Figure 3–2 of Method 3. Just before sampling, leak check (mandatory) the train as described in Section 4.2 of Method 3.

3.2.3 Sample at a constant rate, or as specified by the Administrator. The sampling run must be simultaneous with, and for the same total length of time as, the pollutant emission rate determination. Collect at least 30 liters (1.00 ft^3) of sample gas. Smaller volumes may be collected, subject to approval of the Administrator.

3.2.4 Obtain one integrated flue gas sample during each pollutant emission rate determination. For emission rate correction factor determination, analyze the sample within 4 hours after it is taken for percent CO_2 or percent O_2 (as outlined in Sections 3.2.5 through 3.2.7). the Orsat analyzer must be leak checked (see Section 6 of Method 3) before the analysis. If excess air is desired, proceded as follows: (1) within 4 hours after the sample is taken, analyze it (as in Sections 3.2.5 through 3.2.7) for percent CO_2, O_2, and CO; (2) determine the percentage of the gas that is N_2 by substracting the sum of the percent CO_2, percent O_2, and percent CO from 100 percent; and (3) calculate percent excess air, as outlined in Section 4.2.

3.2.5 To ensure complete absorption of the CO_2, O_2, or if applicable, CO, follow the procedure described in Section 3.1.4.

Note.—Although in most instances only CO_2 or O_2 is required, it is recommended that both CO_2 and O_2 be measured, and that Section 3.4.1 be used to validate the analytical data.

3.2.6 Repeat the analysis until the following criteria are met:

3.2.6.1 For percent CO_2, repeat the analytical procedure until the results of any three analyses differ by no more than (a) 0.3 percent by volume when CO_2 is greater than 4.0 percent or (b) 0.2 percent by volume when CO_2 is less than or equal to 4.0 percent. Average three acceptable values of percent CO_2, and report the results to the nearest 0.2 percent.

3.2.6.2 For percent O_2, repeat the analytical procedure until the results of any three analyses differ by no more than (a) 0.3 percent by volume when O_2 is less than 15.0 percent or (b) 0.2 percent by volume when O_2 is greater than or equal to 15.0 percent. Average the three acceptable values of percent O_2, and report the results to the nearest 0.1 percent.

3.2.6.3 For percent CO, repeat the analytical procedure until the results of any three analyses differ by no more than 0.3 percent. Average the three acceptable values of percent CO, and report the results to the nearest 0.1 percent.

3.2.7 After the analysis is completed, leak check (mandatory) the Orsat analyzer once again, as described in Section 6 of Method 3. For the results of the analysis to be valid, the Orsat analyzer must pass this leak test before and after the analysis.

3.3 Multi-Point, Integrated Sampling and Analytical Procedure.

3.3.1 The sampling points shall be determined as specified in Section 5.3 of Method 3.

3.3.2 Follow the procedures outlined in Sections 3.2.2 through 3.2.7, except for the following: Traverse all sampling points, and sample at each point for an equal length of

time. Record sampling data as shown in Figure 3–3 of Method 3.

3.4 Quality Control Procedures.

3.4.1 Data Validation When Both CO_2 and O_2 Are Measured. Although in most instances, only CO_2 or O_2 measurement is required, it is recommended that both CO_2 and O_2 be measured to provide a check on the quality of the data. The following quality control procedure is suggested.

Note.—Since the method for validating he CO_2 and O_2 analyses is based on combustion of organic and fossil fuels and dilution of the gas stream with air, this method does not apply to sources that (1) remove CO_2 or O_2 through processes other than combustion, (2) add O_2 (e.g., oxygen enrichment) and N_2 in proportions different from that of air, (3) add CO_2 (e.g., cement or lime kilns), or (4) have no fuel factor, F_o, values obtainable (e.g., extremely variable waste mixtures). This method validates the measured proportions of CO_2 and O_2 for fuel type, but the method does not detect sample dilution resulting from leaks during or after sample collection. The method is applicable for samples collected downstream of most lime or limestone flue-gas desulfurization units as the CO_2 added or removed from the gas stream is not significant in relation to the total CO_2 concentration. The CO_2 concentrations from other types of scrubbers using only water or basic slurry can be significantly affected and would render the F_o check minimally useful.

3.4..1.1 Calculate a fuel factor, F_o, using the following equation:

$$F_o = \frac{20.9 - \%O_2}{\%CO_2} \qquad \text{Eq. 3B–1}$$

where:

$\%O_2$ = Percent O_2 by volume, dry basis.
$\%CO_2$ = Percent CO_2 by volume, dry basis.
20.9 = Percent O_2 by volume in ambient air.

If CO present in quantities measurable by this method, adjust the O_2 and CO_2 values before performing the calculation for F_o as follows:

$\%CO_2$ (adj) = $\%CO_2$ + %CO
$\%O_2$ (adj) = $\%O_2$ − 0.5 %CO
where:

%CO = Percent CO by volume, dry basis.

3.4.1.2 Compare the calculated F_o factor with the expected F_o values. The following table may be used in establishing acceptable ranges for the expected F_o if the fuel being burned is known. When fuels are burned in combinations, calculate the combined fuel F_d and F_c factors (as defined in Method 19) according to the procedure in Method 19, Section 5.2.3. Then calculate the F_o factor as follows:

$$F_o = \frac{0.209\ F_d}{F_c} \qquad \text{Eq. 3B–2}$$

Fuel type	F_o range
Coal:	
Anthracite and lignite	1.016–1.130
Bituminous	1.083–1.230
Oil:	
Distillate	1.260–1.413
Residual	1.210–1.370
Gas:	
Natural	1.600–1.836
Propane	1.434–1.586
Butane	1.405–1.553
Wood	1.000–1.120
Wood bark	1.003–1.130

3.4.1.3 Calculated F_o values, beyond the acceptable ranges shown in this table, should be investigated before accepting the test results. For example, the strength of the solutions in the gas analyzer and the analyzing technique should be checked by sampling and analyzing a known concentration, such as air; the fuel factor should be reviewed and verified. An acceptability range of ±12 percent is appropriate for the F_o factor of mixed fuels with variable fuel ratios. The level of the emission rate relative to the compliance level should be considered in determining if a retest is appropriate, i.e.; if the measured emissions are much lower or much greater than the compliance limit, repetition of the test would not significantly change the compliance status of the source and would be unnecessarily time consuming and costly.

4. Calculations

4.1 Nomenclature. Same as Section 5 of Method 3 with the addition of the following:

%EA = Percent excess air.
0.264 = Ratio of O_2 to N_2 in air, v/v.

4.2 Percent Excess Air. Calculate the percent excess air (if applicable) by substituting the appropriate values of percent O_2, CO, and N_2 (obtained from Section 3.1.3 or 3.2.4) into Equation 3B–3.

$$\%EA = \frac{\%O_2 - 0.5\ \%CO}{0.264\ \%N_2 - (\%O_2 - 0.5\ \%CO)} \times 100 \qquad \text{Eq. 3B–3}$$

Note.—The equation above assumes that ambient air is used as the source of O_2 and that the fuel does not contain appreciable amounts of N_2 (as do coke oven or blast furnace gases). For those cases when appreciable amounts of N_2 are present (coal, oil and natural gas do not contain appreciable amounts of N_2) or when oxygen enrichment is used, alternative methods, subject to approval of the Administrator, are required.

5. BIBLIOGRAPHY

Same as Method 3.

[FR Doc. 90–3251 Filed 2–13–90; 8:45 am]
BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–30072G; FRL 3708–5]

Tolerance Processing Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule increases fees charged for processing tolerance petitions for pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA). The change in fees reflects a 3.6 percent increase in pay for civilian Federal General Schedule (GS) employees in 1990.

EFFECTIVE DATE: March 16, 1990.

FOR FURTHER INFORMATION CONTACT: By mail: Ken Wetzel, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1002–E, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1128).

SUPPLEMENTARY INFORMATION: The EPA is charged with administration of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). Section 408 authorizes the Agency to establish tolerance levels and exemptions from the requirements for tolerances for raw agricultural commodities. Section 408(o) requires that the Agency collect fees as will, in the aggregate, be sufficient to cover the costs of processing petitions for pesticide products, i.e., that the tolerance process be as self-supporting

as possible. The current fee schedule for tolerance petitions (40 CFR 180.33) was published in the Federal Register on March 15, 1989 (54 FR 10962) and became effective on April 14, 1989. At that time the fees were increased 4.1 percent in accordance with a provision in the regulation that provides for automatic annual adjustments to the fees based on annual percentage changes in Federal salaries. The specific language in the regulation is contained in paragraph (o) of § 180.33 and reads in part as follows:

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale * * *. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the Federal Register as a final rule to become effective 30 days or more after publication, as specified in the rule.

The pay raise in 1990 for Federal General Schedule employees is 3.6 percent; therefore, the tolerance petition fees are being increased 3.6 percent. The entire fee schedule, § 180.33, is presented for the reader's convenience. (All fees have been rounded to the nearest $25.00.)

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 5, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.33 is revised to read as follows:

§ 180.33 Fees.

(a) Each petition or request for the establishment of a new tolerance or a tolerance higher than already established, shall be accompanied by a fee of $49,950, plus $1,250 for each raw agricultural commodity more than nine on which the establishment of a tolerance is requested, except as provided in paragraphs (b), (d), and (h) of this section.

(b) Each petition or request for the establishment of a tolerance at a lower numerical level or levels than a tolerance already established for the same pesticide chemical, or for the establishment of a tolerance on additional raw agricultural commodities at the same numerical level as a tolerance already established for the same pesticide chemical, shall be accompanied by a fee of $11,425 plus $800 for each raw agricultural commodity on which a tolerance is requested.

(c) Each petition or request for an exemption from the requirement of a tolerance or repeal of an exemption shall be accompanied by a fee of $9,200.

(d) Each petition or request for a temporary tolerance or a temporary exemption from the requirement of a tolerance shall be accompanied by a fee of $19,950 except as provided in paragraph (e) of this section. A petition or request to renew or extend such temporary tolerance or temporary exemption shall be accompanied by a fee of $2,625.

(e) A petition or request for a temporary tolerance for a pesticide chemical which has a tolerance for other uses at the same numerical level or a higher numerical level shall be accompanied by a fee of $9,975 plus $800 for each raw agricultural commodity on which the temporary tolerance is sought.

(f) Each petition or request for repeal of a tolerance shall be accompanied by a fee of $6,250. Such fee is not required when, in connection with the change sought under this paragraph, a petition or request is filed for the establishment of new tolerances to take the place of those sought to be repealed and a fee is paid as required by paragraph (a) of this section.

(g) If a petition or a request is not accepted for processing because it is technically incomplete, the fee, less $1,250 for handling and initial review, shall be returned. If a petition is withdrawn by the petitioner after initial processing, but before significant Agency scientific review has begun, the fee, less $1,250 for handling and initial review, shall be returned. If an unacceptable or withdrawn petition is resubmitted, it shall be accompanied by the fee that would be required if it were being submitted for the first time.

(h) Each petition or request for a crop group tolerance, regardless of the number of raw agricultural commodities involved, shall be accompanied by a fee equal to the fee required by the analogous category for a single tolerance that is not a crop group tolerance, i.e., paragraphs (a) through (f) of this section, without a charge for each commodity where that would otherwise apply.

(i) Objections under section 408(d)(5) of the Act shall be accompanied by a filing fee of $2,500.

(j)(1) In the event of a referral of a petition or proposal under this section to an advisory committee, the costs shall be borne by the person who requests the referral of the data to the advisory committee.

(2) Costs of the advisory committee shall include compensation for experts as provided in § 180.11(c) and the expenses of the secretariat, including the costs of duplicating petitions and other related material referred to the committee.

(3) An advance deposit shall be made in the amount of $24,925 to cover the costs of the advisory committee. Further advance deposits of $24,925 each shall be made upon request of the Administrator when necessary to prevent arrears in the payment of such costs. Any deposits in excess of actual expenses will be refunded to the depositor.

(k) The person who files a petition for judicial review of an order under section 408 (d)(5) or (e) of the Act shall pay the costs of preparing the record on which the order is based unless the person has no financial interest in the petition for judicial review.

(l) No fee under this section will be imposed on the Inter-Regional Research Project Number 4 (IR–4 Program).

(m) The Administrator may waive or refund part or all of any fee imposed by this section if the Administrator determines in his or her sole discretion that such a waiver or refund will promote the public interest or that payment of the fee would work an unreasonable hardship on the person on whom the fee is imposed. A request for waiver or refund of a fee shall be submitted in writing to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (H7505C), Washington, DC 20460. A fee of $1,250 shall accompany every request for a waiver or refund, except that the fee under this sentence shall not be imposed on any person who has no financial interest in any action requested by such person under paragraphs (a) through (k) of this section. The fee for requesting a waiver or refund shall be refunded if the request is granted.

(n) All deposits and fees required by the regulations in this part shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All deposits and fees shall be forwarded to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. The payments should be specifically labeled "Tolerance Petition Fees" and should be accompanied only by a copy of the letter

or petition requesting the tolerance. The actual letter or petition, along with supporting data, shall be forwarded within 30 days of payment to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division, (H7504C) Washington, DC 20460. A petition will not be accepted for processing until the required fees have been submitted. A petition for which a waiver of fees has been requested will not be accepted for processing until the fee has been waived or, if the waiver has been denied, the proper fee is submitted after notice of denial. A request for waiver or refund will not be accepted after scientific review has begun on a petition.

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. In addition, processing costs and fees will periodically be reviewed and changes will be made to the schedule as necessary. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a Final Rule to become effective 30 days or more after publication, as specified in the rule. When changes are made based on periodic reviews, the changes will be subject to public comment.

[FR Doc. 90-3368 Filed 2-13-90; 8:45 am]

BILLING CODE 6560-50-D

40 CFR Part 185

[FAP 9H5584/R1056; FRL-3689-2]

Pesticide Tolerance for Methomyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide methomyl in or on the processed commodity dried hops. The regulation to establish a maximum permissible level for residues of the insecticide was requested in a petition submitted by E.I. du Pont de Nemours & Co.

EFFECTIVE DATE: February 14, 1990.

ADDRESSES: Written objections, identified by the document control number, [FAP 9H5584/R1056], may be submitted to: Hearing Clerk, Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 12, Registration Division (H7505C), Environmental Protection Agency 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-2386.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 29, 1989 (54 FR 27423), which announced that E.I. du Pont de Nemours & Co., Wilmington, DE 19898, had submitted food additive petition (FAP) 9H5584 to EPA proposing to amend 40 CFR part 185 by establishing a permanent tolerance for residues of the insecticide methomyl (S-methyl-N-[(methylcarbomyl)oxy]thioacetimidate) in or on the processed commodity dried hops at 12.0 parts per million (ppm). A 7.0-ppm tolerance with an expiration date of January 12, 1990, has been established under 40 CFR 185.4100, with the provision that additional residue data including a processing study were to be submitted. These additional data indicated that a tolerance of 12.0 ppm is appropriate.

There were no comments or requests for a referral to an advisory committee received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The data considered include the following:

1. A 2-year rat chronic feeding/oncogenicity study with a no-observed-effect level (NOEL) of 100 ppm (5.0 milligrams/kilogram/day (mg/kg/day)) for systemic effects and negative for oncogenic effects under the conditions of the study;

2. A 2-year mouse chronic feeding/oncogenicity study with a NOEL of 50 ppm (7.5 mg/kg/day) and negative for oncogenic effects under the conditions of the study;

3. A 2-year dog feeding study with a NOEL of 100 ppm (2.5 mg/kg/day);

4. A three-generation rat reproduction study with a reproductive NOEL of 100 ppm (5.0 mg/kg/day);

5. A 90-day dog feeding study with a NOEL of 400 ppm (10.0 mg/kg/day);

6. A rat teratology study with no teratogenic potential noted at 400 ppm (20.0 mg/kg/day) (highest dose tested [HDT]);

7. A rabbit teratology study with no teratogenic potential at 16.0 mg/kg/day (HDT); and

8. A hen delayed neurotoxicity study which was negative for neurotoxic effects at 200.0 mg/kg.

The acceptable daily intake (ADI), based on the 2-year dog feeding study (NOEL of 2.5 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.025 mg/kg of body weight (bwt)/day. The maximum permitted intake for a 60-kg human is calculated to be 1.5 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.0169 mg/day; the current action will increase the TMRC by .000269 mg/day (1.59 percent). Published tolerances utilize 68.86 percent of the ADI; the current action will utilize an additional 1.078 percent.

Methomyl is structurally similar to thiodicarb. Thiodicarb has been shown to have a minor animal metabolite, acetamide, which has been demonstrated to induce cancer in rats. When tolerances were granted for thiodicarb for cottonseed and soybeans, the Agency presented a detailed rationale in the **Federal Register** of July 3, 1985 (50 FR 27452), for issuance of these tolerances under the so-called "Sensitivity of Method" analysis because acetamide residues could be present in milk, meat, or eggs from animals or poultry that had consumed thiodicarb-treated feed, thus possibly implicating the "Delaney clause" in section 409(c)(3) of the Federal Food, Drug, and Cosmetic Act (FFDCA) despite the low risk involved.

This proposed food additive regulation for methomyl on dried hops does not raise issues under the Delaney clause because, based on available data, there is no reason to believe that the tolerance will result in the presence of acetamide in any human food or animal feed. A Registration Standard for methomyl was issued in 1981. A second-round review was issued in April 1989. Residue data that were reviewed for this petition are from Germany and support the use of methomyl on imported hops only. This tolerance does not support methomyl's use on domestically grown hops. To support such a use, additional residue data are needed on hops grown in the United States. Until these requirements have been met, the Agency is not in a position to entertain applications for registration under section 3 or 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, for methomyl's use on hops grown in the United States or its territories. The nature of the residues in plants is adequately understood. The residue of concern for the proposed use on hops is the parent compound, methomyl per se. A goat metabolism study has been reviewed, indicating the animal metabolism to be similar to that of plants. An additional livestock metabolism study has been requested. The nature of the residues in animals will be reevaluated upon receipt and review of the study. For the purposes of

this petition only, the metabolism of methomyl in livestock is adequately understood for the use of methomyl in or on dried hops.

An adequate analytical method, gas chromatography using a sulfur-sensitive photometric detector, is available in the Food and Drug Administration Pesticide Analytical Manual, Vol. II (PAM II), for enforcement purposes.

Based on the above information, the Agency has concluded that the use of methomyl on hops is safe. The pesticide is considered useful for the purpose for which the tolerance is sought. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 185

Aministrative practice and procedure, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 31, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 185 is amended as follows:

PART 185—[AMENDED]

1. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

2. By revising § 185.4100, to read as follows:

§ 185.4100 Methomyl.

A food additive tolerance of 12 parts per million is established for residues of the insecticide methomyl (S-methyl-N-[(methylcarbomyl)oxy]thioacetimidate) in or on the processed commodity dried hops as a result of application to the growing hops. There are no United States registrations for use of methomyl on hops, as of February 14, 1990.

[FR Doc. 90–3245 Filed 2–13–90; 8:45 am]
BILLING CODE 6560–50–D

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40 CFR Part 372

[OPTS–400029A; FRL–3688–3]

Aluminum Oxide; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is deleting non-fibrous forms of aluminum oxide (Al_2O_3), CAS No. 1344–28–1, from the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Fibrous forms of Al_2O_3 will remain listed under section 313. By promulgating this rule, EPA is relieving facilities of their obligation to report releases of non-fibrous forms of Al_2O_3 that occurred during the 1989 calendar year, and releases that will occur in the future. This relief applies only to reporting requirements under section 313 of EPCRA. Release reporting under section 313 will continue to be required for fibrous forms of Al_2O_3.

DATES: This rule is effective February 14, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Israel, Petition Coordinator, Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, 401 M St., SW., Mail Stop OS–120, Washington, DC 20460, Toll free: 800–535–0202, In Washington, DC and Alaska, (202) 479–2449.

SUPPLEMENTARY INFORMATION:

I. Description of Petition and Regulatory History

EPA received a section 313(e) petition to delete Al_2O_3, CAS No. 1344–28–1, from the list of toxic chemicals in 40 CFR 372.65. The petition from the Aluminum Association was received on September 30, 1988.

After reviewing the petition and additional related information, EPA concluded that non-fibrous forms of Al_2O_3 did not meet the listing criteria under section 313(d)(2) for acute human health effects, chronic health effects, or environmental toxicity. It is EPA's determination that available data do not demonstrate that non-fibrous forms of Al_2O_3 cause or can reasonably be anticipated to cause significant adverse human health or environmental effects. Non-fibrous Al_2O_3 was found to have only weak fibrogenic potential and was not found to cause cancer or serious or irreversible pulmonary disease. Although aluminum has been implicated in Alzheimer's disease as well as amyotrophic lateral sclerosis (ALS) and ALS-parkinsonism dementia, EPA found no clear evidence that it has a role in the observed pathological changes, signs, and symptoms of any of those diseases.

However, it is also EPA's determination that evidence exists to support the finding that exposure to fibrous forms of Al_2O_3 via inhalation may lead to the development of cancer in humans. Therefore, EPA issued a proposed rule in the Federal Register of April 24, 1989 (54 FR 16376), announcing EPA's proposal to delete only non-fibrous forms of Al_2O_3 from the section 313 list. The proposed rule also requested public comment on the possibility of establishing a "respirable fibers" category under section 313.

The proposed rule contains a detailed summary of EPA's review of the petition to delete Al_2O_3, as well as additional information on the petition process under section 313 of EPCRA.

II. Response to Public Comment

As of December 1, 1989, EPA had received 62 comments on the proposed rule. Forty-seven of those comments related in whole or in part to the proposed deletion of non-fibrous forms of Al_2O_3; 14 comments addressed the issue of establishing a "respirable fibers" category; and 1 comment, from the U.S. Bureau of Mines, provided information on the definition of mineral and other fibers.

Of the 47 comments concerning the deletion of non-fibrous forms of Al_2O_3, 46 were comments received from industry and industry associations in support of EPA's proposal. One of those 46 commenters supporting the deletion of non-fibrous Al_2O_3 objected to the retention of fibrous forms of Al_2O_3 on the list. The commenter stated that EPA should not have used an intraperitoneal injection study as the basis for its conclusion concerning the risks of fibrous Al_2O_3, since this type of study is not representative of normal routes of exposure. As discussed in the proposed

rule, EPA believes that because inhalation studies in rodents may not be adequately sensitive for evaluating the carcinogenic potential of fibrous materials in humans, intrapleural, intratracheal and intraperitoneal routes of administration may be used. While these methods may not necessarily be predictive of cancer hazard via inhalation, they are of value in determining the intrinsic carcinogenic activity of test fibers close to or in contact with the target tissues.

Two of the 46 commenters supporting the decision also requested or suggested clarification of the definition of fibrous Al_2O_3 for reporting purposes. A discussion of the characterization of fibrous Al_2O_3 has been added (see Unit III) to address those concerns and assist industry in determining their reporting obligation.

One comment objecting to the proposed deletion of non-fibrous Al_2O_3 was received from the United Steelworkers Union. The commenter submitted two pages from a two-part study which indicated possible chronic effects on workers in Al_2O_3 manufacturing facilities. Upon obtaining and reviewing the complete study, EPA found that one part of the study had already been evaluated in the initial review and was not determined to represent evidence that Al_2O_3 causes or can reasonably be anticipated to cause cancer or other chronic human health effects as defined by the statute (see Randecker, L. Hazard Assessment of Aluminum Oxide. USEPA, December 1988.). The other part of the study presents data which show that workers exposed for long periods of time and with a high cumulative total dust exposure had an increased incidence of respiratory symptoms (wheeze) and minor x-ray abnormalities. These findings are consistent with EPA's finding, presented in the proposed rule, that non-fibrous Al_2O_3 has only weak fibrogenic potential and does not appear to cause cancer or severe or irreversible pulmonary disease.

The comment from the U.S. Bureau of Mines expressed concerns about EPA's general definition of a fiber as an elongated particle with a length-to diameter ratio (aspect ratio) of greater than or equal to 3:1. The commenter states that this definition is misleading and that use of this definition appears to stem from its use to characterize asbestos for monitoring purposes. The commenter provided alternative definitions of fibers and stated that for man-made materials, a fiber refers to an individual filament of great or indefinite length which may be cut to various lengths as dictated by the use or application. EPA has not attempted to define fibrous Al_2O_3 in response to this comment and other comments concerning the definition of fibrous Al_2O_3. Rather, EPA has added to the final rule information concerning the characterization of fibrous Al_2O_3 for purposes of reporting under section 313.

At this time, EPA does not intend to move forward with development and proposal of a respirable fibers category to be added to the section 313 list. In light of several comments received on this issue, EPA does wish to point out that the request for comments on the idea of establishing a respirable fibers category was included in the proposed rule only as a means of initiating dialog and did not constitute a formal proposed rule to establish such a category. Comments which were received on this issue will be retained and will be considered when and if the EPA decides to reexamine the possibility of establishing a respirable fibers category on the section 313 list.

Based upon an evaluation of the petition, available toxicity and exposure information, and the comments, EPA affirms its determination that non-fibrous forms of Al_2O_3 do not meet any of the listing criteria contained in section 313(d). Therefore, EPA is deleting non-fibrous forms of Al_2O_3 from the list of chemicals subject to reporting under section 313 of EPCRA. As a result of this action, facilities will not be required to report releases of non-fibrous forms of Al_2O_3 that occurred during the 1989 calendar year, and releases that will occur in the future. However, as stated in the proposal, EPA believes that fibrous forms of Al_2O_3 can reasonably be anticipated to cause cancer in humans. Thus, fibrous forms of Al_2O_3 will remain on the section 313 list, and facilities will continue to be required to report annually any releases of fibrous forms of Al_2O_3.

III. Characterization of Fibrous Forms of Aluminum Oxide

Fibrous Al_2O_3 is a man-made fiber. It is processed to produce strands or filaments which can be cut to various lengths which may depend on the ultimate application. Fibrous Al_2O_3 does not appear to exist commercially as a 100 percent pure fiber. Varying amounts of silica are generally used to coat the fiber to give it increased strength and wettability for its use in composite fabrication.

EPA has identified one importer and one manufacturer of fibrous Al_2O_3. While EPA lacks any production and importation figures, it is estimated that fibrous Al_2O_3 accounts for less than 1 percent of all Al_2O_3 consumed in the U.S. Saffil is an Al_2O_3 containing fiber which is imported by ICI Americas, Inc. This fiber typically contains 85 percent Al_2O_3 fiber. This material is commonly used in high temperature insulation applications such as furnace linings, filtration, gaskets, joints, and seals. The importation volume is unknown; however, there are roughly 200 customers for this product. Additionally, duPont operates a pilot plant which produces Al_2O_3 fibers which are 99.9 percent pure. This material is used in metal-matrix reinforcement usually with aluminum, lead, and magnesium. Production figures for this product are also unknown. These two fibers are presented as examples only; other Al_2O_3 fibers may exist.

It needs to be made clear that silica coated Al_2O_3 fibers should not be confused with aluminosilicates (e.g., $Al_2Si_2O_7 \cdot H_2O$), aluminoborosilicates (such as the 3M, Corp. Nextel Brand Fiber), Zeolites (e.g., $Ca_6Al_{12}Si_{24}O_{72} \cdot 40H_2O$), aluminum silicate hydroxides (e.g., $Al_2Si_2O_5(OH)_4$), and other related materials. These substances are either naturally occurring or are prepared by fusion at high temperatures (i.e., 1300 °C). The above types of materials are not subject to section 313 reporting under the fibrous Al_2O_3 listing.

Since fibrous Al_2O_3 is manufactured as a mixture (i.e., Al_2O_3 fibers coated with silica), determining threshold and reporting releases should be based on the portion of the fiber that is fibrous Al_2O_3. In the case of Saffil fiber, described above, manufacturers, processors, and users need to consider 85 percent of the total weight of the fiber when considering threshold determinations and release estimates because Saffil fiber contains an average of 85 percent fibrous Al_2O_3.

As with other mixtures, the section 313 de minimis standard applies to fibrous Al_2O_3. Any mixture containing fibrous Al_2O_3 at a level of 1.0 percent or greater is subject to reporting under section 313.

Although fibrous aluminum oxide is being retained on the section 313 list due to concerns for carcinogenicity, a de minimis level of 1.0 percent still applies. The assignment of a de minimis level of 0.1 percent requires that a chemical meet the definition of a carcinogen or potential carcinogen as described by OSHA under the Hazard Communication Reporting Standard. Under this standard, a chemical is considered to be a carcinogen or potential carcinogen if: (1) It has been evaluated by the International Agency for Research on Cancer (IARC), and

found to be a carcinogen or potential carcinogen; or (2) it is listed as a carcinogen or potential carcinogen in the Annual Report on Carcinogens published by the National Toxicology Program (NTP) (latest edition); or (3) it is regulated by OSHA as a carcinogen (listed in 29 CFR part 1910, subpart Z).

Because fibrous aluminum oxide does not appear on any of these lists, a de minimis level of 1.0 percent applies. However, fibrous aluminum oxide's absence from these lists should not be interpreted as evidence against its potential carcinogenicity, since these lists are not exhaustive.

IV. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "major rule" because it will not have an effect on the economy of $100 million or more. This rule will decrease the impact of the section 313 reporting requirements on covered facilities and will result in cost-savings to industry, EPA, and States.

This rule was submitted to the Office of Management and Budget (OMB) under Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, EPA must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected. Because the rule will result in cost savings to facilities, EPA certifies that small entities will not be significantly affected by this rule.

C. Paperwork Reduction Act

This rule relieves facilities from having to collect information on the use and releases of non-fibrous forms of Al_2O_3. Therefore, there were no information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 372

Chemicals, Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: February 3, 1990.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is amended as follows:

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Section 372.65(a) and (b) are amended by changing the entry for aluminum oxide to read "Aluminum oxide (fibrous forms)" under paragraph (a) and for the CAS number entry 1344–28–1 under paragraph (b).

[FR Doc. 3645; Filed 2–13–90; 8:45 am]

BILLING CODE 6560–50–D

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 528, 552 and 553

[APD 2800.12A CHGE 3]

General Services Administration Acquisition Regulation; Bonds

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) (APD 2800.12A) is amended to: (1) Remove section 528.101–4; (2) amend section 528.103–2 to remove percentage parameters for establishing the penal amounts of a performance bond from paragraph (c) and thereby permit the contracting officer to establish the penal amount on a case-by-case basis and to amend paragraph (d) to modify the prescriptive language for use of the clause at 552.228–72, Performance Bond, to reflect the need to modify the clause when it is used in solicitations that do not contain options to extend the period of performance; (3) amend section 528.103–3 to remove percentage parameters for establishing the penal amount of a payment bond from paragraph (b) and thereby permit the contracting officer to establish the penal amount of payment bonds on a case-by-case basis and to amend paragraph (c) to modify the prescriptive language for use of the clause at 552.228–73, Performance and Payment Bonds, to reflect the need to modify the clause when it is used in solicitations that do not contain options to extend the period of performance; (4) add section 528.106–1 to provide for use of the GSA Form 3604, Performance Bond for Other Than Construction Contracts, instead of the Standard Form 25, Performance Bond, when a performance bond is required for building service and other service contracts; (5) revise the title of section 528.202 to be consistent with the FAR; (6) section 528.202–1 is removed by redesignating paragraphs (a), (b) and (d) as 528.202 (a), (b) and (c) respectively and removing paragraph (c); (7) remove sections 528.202–2, 528.202–70 and 528.202–71; (8) revise the title of section 528.203 and include material previously located in paragraph (c) of section 528.202–70; (9) add section 528.204 and move current material in 528.303 to this section; (10) add section 528.203–7 to implement FAR 28.203–7; (11) remove section 528.270; (12) revise sections 552.228–72 and 552.228–73 to provide for the submission of performance or performance and payment bonds for the initial period of performance only after the contract is awarded, and to provide for the submission of an additional performance or performance and payment bond when an option to extend the period of performance is exercised by the Government; (13) remove section 552.228–74; (14) add section 553.370–3604 to illustrate the GSA Form 3604, Performance Bond for Other Than Construction Contracts; and (15) revise sections 553.370–300 and 553.370–300A to illustrate the June 1989 editions of the GSA Form 300, Order for Supplies and Services and GSA Form 300A, Order for Supplies and Services (Continuation). The intended effect of the revision is to conform the GSAR with the Federal Acquisition Regulation (FAR) as amended by FAC 84–53 and to resolve problems with the use of performance bonds on building service contracts that contain options to extend the period of performance.

EFFECTIVE DATE: February 26, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott, Office of GSA Acquisition Policy, (202) 566–1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

A notice of proposed rulemaking was published in the **Federal Register** on June 26, 1989 (GSAR Notice No. 5–244, 54 FR 26806). One public comment from The Surety Association of America was received. Comments received from The Surety Association of America and various GSA offices have been considered and where appropriate incorporated in the final rule.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Regulatory Flexibility Act

In GSAR Notice 5–244, GSA indicated that the rule may have an economic effect on a substantial number of small

entities and invited comments from the public. Comments received were in support of the proposed rule. The final regulatory flexibility analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Copies of the final regulatory flexibility analysis are available from the office identified above. The final regulatory flexibility analysis indicates that the rule will affect contractors who are interested in competing for, or are awarded, GSA service contracts that include bonding requirements. GSA does not maintain statistics on the number of service contracts that require bonds. GSA believes the rule will have a beneficial impact in that it will enable more contractors, particularly small and small disadvantaged business concerns, to compete for such contracts.

D. Paperwork Reduction Act

The rule does contain information collection requirements that have been approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and assigned control number 3090–0245. The titles of the collections are 48 CFR 552.228–72, Performance Bond, and 48 CFR 552.228–73, Performance and Payment Bonds. The clauses require the contractor to submit bonds. In accordance with 41 CFR 201–45.510, GSA has obtained an exception to permit the agency to use the GSA Form 3604, Performance Bond for Other Than Construction Contracts, for service contracts in lieu of the Standard Form 25, Performance Bond. The GSA form does not request any information beyond that required by the standard form. The estimated annual burden for this collection is 275 hours. This is based on an estimated average burden hour per response of 0.25, 1 response per respondent, and an estimated 1,100 respondents per year. Comments on the information collection requirement may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for GSA, Washington, DC 20503.

List of Subjects in 48 CFR Parts 528, 552 and 553

Government procurement.

1. The authority citation for 48 CFR parts 528, 552 and 553 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 528—BONDS AND INSURANCE

528.101–4 [Removed]

2. Section 528.101–4 is removed.

3. Section 528.010–2 is amended by revising paragraphs (c) and (d) to read as follows:

528.103–2 Performance bonds.

* * * * *

(c) The contracting officer shall consider the circumstances and determine the penal amount of the performance bond on a case-by-case basis.

(d) The contracting officer shall insert a clause substantially the same as the clause at 552.228–72, Performance Bond, in solicitations and contracts when a building service or other service contract is contemplated and a performance bond requirement is to be included. The clause should be appropriately modified to delete references to the base term and options to extend the term of the contract when the solicitation does not include an option provision.

4. Section 528.103–3 is amended by revising paragraphs (b) and (c) to read as follows:

528.103–3 Payment bond

* * * * *

(b) The contracting officer shall consider the circumstances and determine the penal amount of the payment bond on a case-by-case basis.

(c) The contracting officer shall insert a clause substantially the same as the clause at 552.228–73, Performance and Payment Bonds, in solicitations and contracts when a building service or other service contract is contemplated and a performance and payment bond requirement is to be included. The clause should be appropriately modified to delete references to the base term and options to extend the term of the contract when the contract does not include an option provision.

5. Section 528.106–1 is added to read as follows:

528.106–1 Bonds and bond related forms:

The GSA Form 3604, Performance Bond for Other Than Construction Contracts, must be used instead of the Standard Form 25, Performance Bond, when a performance bond is required for building service or other service contracts.

6. Section 528.202 is retitled and revised to read as follows:

528.202 Acceptability of corporate sureties.

(a) The current edition of Treasury Department Circular 570 must be prominently displayed in bid opening rooms, in GSA Business Service Centers, and in all places where bid forms and information are regularly available. Copies should be made available to officials having a need to know.

(b) Corporate surety bonds must be manually signed by the Attorney-in-Fact or officer of the surety company and the corporate seal affixed. Failure of the surety to affix the corporate seal may be waived as a minor informality. (See B–184120, July 2, 1975, 75–2–CPD 9.)

(c) A contractor submitting a performance or payment bond executed by an unacceptable corporate surety in satisfaction of a performance or payment bond requirement may be permitted to substitute an acceptable surety for a surety previously determined to be unacceptable.

528.202–1 and 528.202–2 [Removed]

7. Sections 528.202–1 and 528.202–2 are removed.

8. Section 528.202–70 is revised to read as follows:

528.202–70 Acceptability of bonds and sureties.

The contracting officer shall verify the acceptability of the surety on a bond by placing the words "Acceptability of Bond Verified," and sign immediately thereunder, on the bond or on a properly identified attachment. The bond must be retained with the original of the contract. The contracting officer shall notify the contractor that the bond(s) has been accepted.

528.202–71 [Removed]

9. Section 528.202–71 is removed.

10. Section 528.203 is retitled and revised to read as follows:

528.203 Acceptability of individual sureties.

Evidence of possible criminal or fraudulent activities by an individual surety must first be referred to the Assistant Inspector General for Investigations or to the appropriate regional inspector General for Investigations. The Office of Inspector General may conduct an investigation and, when appropriate, refer the matter to the Associate Administrator for Acquisition Policy. Referrals must include the information required by 528.203–7.

11. Section 528.203–7 is added to read as follows:

528.203–7 Exclusion of individual sureties.

(a) The Associate Administrator for Acquisition Policy or designee excludes individuals from acting as a surety on bonds under FAR 28.203–7.

(b) Referrals for consideration of exclusion must include as a minimum:

(1) The basis for exclusion (see FAR 28.203–7(b));

(2) A statement of facts;

(3) Copies of supporting documentary evidence;

(4) The individuals name and current or last known home and or business addresses including zip codes;

(5) A statement of GSA's history with such individuals, if any; and

(6) A statement concerning any known active or potential criminal investigations or court proceedings.

12. Section 528.204 is added to read as follows:

528.204 Options in lieu of sureties.

(a) An irrevocable letter of credit may be accepted as a bid guarantee under FAR clause 52.228–1, Bid Guarantee.

(b) Security deposited instead of corporate or individual sureties on bonds must be safeguarded as provided in procedures issued by the Office of the Comptroller immediately after they are received. United States bonds or notes received in the District of Columbia must be deposited with the Treasurer of the United States as provided in FAR 28.204–1.

528.270 [Removed]

13. Section 528.270 is removed.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. Section 552.228–72 is revised to read as follows:

552.228–72 Performance bond.

As prescribed in 528.103–2(d), insert a clause substantially as follows:

Performance Bond (Feb. 1990)

(a) The Offeror to whom the award is made shall furnish a performance bond for the protection of the Government in an amount equal to —— percent of the contract price for the base term of the contract. In determining the bond amount, "base term of the contract" refers to the initial period of performance EXCLUDING ANY OPTION(S). The guaranty shall cover the base term of the contract and any extensions thereof excluding any option(s) to extend the term of the contract.

(b) When the government exercises an option that extends the term of the contract, the Contractor shall be required to furnish an additional performance bond in an amount equal to —— percent of the contract price and a payment bond in an amount equal to —— percent of the contract price for each option term exercised by the Government. In determining the bond amount, "option term" refers to the period of performance for the option being exercised. The guaranty for each option exercised shall cover the option term and any extensions thereof.

(c) The bond shall be provided within 15 calendar days after receiving written notice of award (or acceptance of offer) for the base term of the contract or written notification of the exercised option. The period of time for furnishing the performance bond may be extended for 10 calendar days, if fully justified in the opinion of the Contracting Officer, and if the request for the extension is received or confirmed in writing within the original 15 calendar day period. Failure of the Contractor to provide the required bond may be cause to terminate the Contractor's right to proceed under the base of option term of the contract.

(d) The failure of a surety to renew a bond for any option term shall not result in a default of the bond previously furnished covering any base or option term.

(e) The performance bond shall be a firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, or in accordance with Treasury Department regulations, certain bonds or notes of the United States.

(End of Clause)

15. Section 552.228–73 is revised to read as follows:

552.228–73 Performance and Payment Bonds.

As prescribed in 528.103–3(c), insert a clause substantially as follows:

Performance and Payment Bonds (Feb. 1990)

(a) The Offeror to whom the award is made shall furnish a performance bond for the protection of the Government in an amount equal to —— percent of the contract price and a payment bond in an amount equal to —— percent of the contract price for the base term of the contract. In determining the bond amount, "base term of the contract" refers to the initial period of performance EXCLUDING ANY OPTION(S). The guaranty shall cover the base term of the contract and any extensions thereof excluding any option(s) to extend the term of the contract.

(b) Prior to exercise of any option that extends the term of the contract, the Contractor shall be required to furnish an additional performance bond in an amount equal to —— percent of the contract price and a payment bond in an amount equal to —— percent of the contract price for each option term exercised by the Government. In determining the bond amount, "option term" refers to the period of performance for the option being exercised. The guaranty for each option exercised shall cover the option term and any extensions thereof.

(c) The bonds shall be provided within 15 calendar days after receiving written notice of award (or acceptance of offer) for the base term of the contract or written notification of the exercised option. The period of time for furnishing the bonds may be extended for 10 calendar days, if fully justified in the opinion of the Contracting Officer, and if the request for the extension is received or confirmed in writing within the original 15 calendar day period. Failure to provide the required bonds may be cause to terminate the Contractor's right to proceed under the base or option term of the contract.

(d) The failure of a surety to renew a bond for any option term shall not result in a default of the bond previously furnished covering any base or option term.

(e) The performance and payment bonds shall be a firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, or in accordance with Treasury Department regulations, certain bonds or notes of the United States.

(End of Clause)

552.228–74 [Removed]

16. Section 552.228–74 is removed.

Note.—GSA Forms 300, 300A and 3604 mentioned in the summary will not appear in this volume of the **Federal Register** nor Title 48, Chapter 5 of the Code of Federal Regulations. However, the forms are illustrated in and made a part of the GSA loose-leaf edition. Copies may be obtained from the Director of the Office of GSA Acquisition Policy (VP), 18th and F Streets, NW., Washington, DC 20405.

Dated: February 2, 1990.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

[FR Doc. 90–3412 Filed 2–13–90; 8:45 am]

BILLING CODE 6820–61–M

Proposed Rules

Federal Register
Vol. 55, No. 31
Wednesday, February 14, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

Required Documents Aboard Private Aircraft

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations, part 122, to provide that the documents to be aboard private aircraft upon arrival in the U.S., and to be presented for inspection at such time when requested by a Customs officer, must include a valid pilot certificate, flight instructor certificate, medical certificate, authorization or license, and for U.S.-registered aircraft arriving from a foreign place, a valid certificate of registration which would not include a so-called "pink slip," a "pink slip" being nothing more than a duplicate copy of the application form (FAA Form AC 8050–1) for a certificate of registration. The penalty provisions in part 122 are also proposed to be revised to make express provisions for these document requirements. This initiative is undertaken to achieve greater enforcement capability in processing private aircraft arriving from foreign, and to combat the continuing problem of drug smuggling by air.

DATE: Comments must be received on or before April 16, 1990.

ADDRESSES: Written comments (preferably in triplicate) must be submitted to and may be inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments relating to the information collection aspects of the proposal should be addressed to Customs, as noted above, and also to the Office of Management and Budget, Paperwork Reduction Project 1515–0153, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Samuel McLinn, Office of Passenger Enforcement and Facilitation (202) 566–5607.

Per Jensen, Office of Aviation Operations (202) 535–9051.

SUPPLEMENTARY INFORMATION:

Background

As amended by Public Law 99–570, on October 27, 1986, 19 U.S.C. 1433 provides, in subsection (d), that an "aircraft pilot shall present to Customs officers such documents, papers, or manifests as the Secretary shall by regulation prescribe." Currently, however, the documents required in § 122.27, Customs Regulations (19 CFR 122.27) with reference to private aircraft arriving from foreign essentially pertain only to baggage declarations for crewmembers and passengers, and if found necessary, written declarations of articles acquired in foreign areas.

In order to give greater enforcement capability in processing private aircraft arriving from abroad, and to combat the problem of drug smuggling by air, an amendment to § 122.27 is necessary, so as to require that the documents to be aboard the aircraft upon arrival from foreign, and to be presented at such time for inspection when requested by a Customs officer, must include a valid pilot certificate, flight instructor certificate, medical certificate, authorization or license, and for U.S.-registered aircraft a valid certificate of registration. In this latter regard, 49 U.S.C. App. 1401(g) also requires that "[t]he operator of an aircraft shall make available for inspection an aircraft's certificate of registration upon request by a Federal, State, or local law enforcement officer." A certificate of registration would not include a so-called "pink slip" (FAA Form AC 8050–1), a "pink slip" being nothing more than a duplicate copy of the application for a certificate of registration.

Inasmuch as an essential part of the inspection process is document review, to help ensure compliance with these proposed document requirements, the penalty provisions set forth in subpart Q of part 122, specifically § 122.161 (19 CFR 122.161), which include seizure and forfeiture of the aircraft, would be amended so as to explicitly apply to private aircraft which do not have aboard a valid certificate of registration upon arrival.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. to 4:30 p.m. at the Regulations and Disclosure Law Branch, Customs Service Headquarters, room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

Executive Order 12291

The document does not meet the criteria of a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified that, if adopted, this proposed amendment will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information in this notice of proposed rulemaking is in § 122.27, Customs Regulations (19 CFR 122.27). This information is required by Customs as a means of giving greater enforcement capability in processing private aircraft arriving from abroad, and to combat the problem of a drug smuggling by air. The information will be used as an essential part of the inspection process, upon arrival of private aircraft from abroad.

The instruments—a valid pilot certificate, flight instructor certificate, or medical certificate as cleared under FAA–2120–0021 and 2120–0034, or an authorization or license, and, for U.S.-registered aircraft, a valid certificate of registration as cleared under FAA–2120–0005—must be carried on the individual/aircraft in accordance with Federal Aviation Regulations 61.3(h) and 91.27(a)(2) (14 CFR 61.3(h) and 91.27(a)(2)). Therefore, Customs does not

anticipate any additional information collection burden in this case.

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reductions Act of 1980 (44 U.S.C. 3504(h)). Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Paperwork Reduction Project 1515–0153, Washington, DC 20503, with copies to the U.S. Customs Service at the address previously specified.

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 122

Customs duties and inspection, Imports, Air carrier, Aircraft, Airports.

Proposed Amendments to the Regulations

It is proposed to amend part 122, Customs Regulations (19 CFR part 122), as set forth below.

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1624, 1644, 49 U.S.C. App. 1509.

2. It is proposed to amend § 122.27 to add a new paragraph (c) as follows:

§ 122.27 Documents required.

* * * * *

(c) *Pilot license, certificate of registration—*

(1) *Pilot license.* A commander of a private aircraft arriving in the U.S. must present for inspection a valid pilot certificate, flight certificate, medical certificate, authorization, or license held by that person, when presentation for inspection is requested by a Customs officer.

(2) *Certificate of registration.* A valid certificate of registration for private aircraft which are U.S.-registered must also be presented upon arrival in the U.S., when presentation for inspection is requested by a Customs officer. A so-called "pink slip" is a duplicate copy of the Aircraft Registration Application (FAA Form AC 8050–1), and does not constitute a valid certificate of registration authorizing travel internationally.

3. It is proposed to revise § 122.161 as follows:

§ 122.161 In general.

Except as provided in § 122.14, any person who violates any Customs requirements stated in this part, or any regulation that applies to aircraft under § 122.2, is, in addition to any other applicable penalty, subject to a civil penalty of $5,000 as provided by 49 U.S.C. App. 1474, except for overages, and failure to manifest narcotics or marihuana, in which cases the penalties set forth in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584) apply, or for failure to report arrival or to present the documents required by § 122.27(c) of this part in which cases the penalties set forth in section 436, Tariff Act of 1930 as amended (19 U.S.C. 1436) apply, and any aircraft used in connection with any such violation shall be subject to seizure and forfeiture, as provided for in the Customs laws. A penalty or forfeiture may be mitigated under part 171 of this chapter.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: February 8, 1990.

John P. Simpson,

Assistant Secretary of the Treasury.

[FR Doc. 90–3444 Filed 2–13–90; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

Alaska Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Alaska permanent regulatory program (hereinafter, the "Alaska program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to permit application requirements, environmental resource information requirements, reclamation and operation plan, permit application review procedures, exploration activities, bonding requirements, performance standards, inspection and enforcement requirements, lands unsuitable and general provisions. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, incorporate the additional flexibility afforded by the revised Federal regulations and improve operational efficiency.

This notice sets forth the times and locations that the Alaska program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., March 16, 1990. If requested, a public hearing on the proposed amendment will be held on March 12, 1990. Requests to present oral testimony at the hearing must be received by 4 p.m. on March 1, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to Jerry R. Ennis at the address listed below. Copies of the Alaska program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, WY 82601–1918, Telephone: (307) 265–5776.

Gerald Gallagher, Director, Department of Natural Resources, Division of Mining, P.O. Box 107016, Anchorage, AK 99510–7106, Telephone: (907) 762–2170.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Director, Casper Field Office, at the address listes in **"ADDRESSES"** or telephone: (307) 265–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Alaska Program

On March 23, 1983, the Secretary of the Interior approved the Alaska program. General background information on the Alaska program including the Secretary's findings and the disposition of comments can be found in the March 23, 1983 Federal Register (48 FR 12274). Subsequent actions concerning the Alaska program and program amendments can be found at 30 CFR 902.15.

II. Proposed Amendment

By letter dated February 2, 1990 (Administrative Record No. AK–C–01) Alaska submitted a proposed amendment to its program pursuant to SMCRA. Alaska submitted the proposed amendment in response to letters dated May 7, 1986, June 9, 1987 and December 16, 1988 (Administrative Record Nos. AK–C–02, AK–C–03, and AK–C–04) sent by OSM in accordance with 30 CFR 732.17(d) requiring certain provisions of the State program to be updated for consistency with the Federal regulations.

The regulations that Alaska proposes to amend are: Article 3, General Permit Application Information Requirements; Article 4, Environmental Resource Information Requirements; Article 5, Reclamation and Operation Plan; Article 6, Processing of Permit Applications; Article 7, Permitting for Special Categories of Mining; Article 8, Exploration; Article 9, Small Operator Assistance Program; Article 10, Bonding; Article 11, Performance Standards; Article 12, Inspection and Enforcement; Article 13, Process for Identifying Land Unsuitable for Mining; and Article 17, General Provisions.

Alaska is also submitting proposed policy statements addressing the following subjects: Policy Statement A, Maintenance of Records; Policy Statement B, Small Operator Assistance; Policy Statement C, Public Notice of Blasting; Policy Statement D, Surface Water Information; Policy Statement E, Scope of the Cumulative Hydrologic Impact Assessment; Policy Statement F, U.S. Fish and Wildlife Service Information Requests; and Policy Statement G, Determining Peak Discharge for Hydrologic Designs.

The amendment package also contains proposed Guidelines for Conducting Premining Vegetation Inventories and Determining Revegetation Success and revised petition forms for designating lands as unsuitable for mining, as well as terminating such designations.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Alaska program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4 p.m., m.d.t. on March 1, 1990. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at a public hearing, a hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **"FOR FURTHER INFORMATION CONTACT"**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES"**. A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 902

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 6, 1990.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 90–3448 Filed 2–13–90; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 917

Kentucky Permanent Regulatory Program; Kentucky Bond Pool

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of the public comment period.

SUMMARY: OSM is reopening the public comment period on the substantive adequacy of certain program amendments submitted by the Commonwealth of Kentucky to modify the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). On September 18, 1989, Kentucky submitted a proposed amendment on the Kentucky bond pool. On January 19, 1990, Kentucky resubmitted this proposed amendment with additional changes and clarifications. The amendment consists of proposed modifications to Kentucky Administrative Regulations (KAR) at 405 KAR 10:200, the regulations governing Kentucky's alternative bonding program known as the Kentucky Bond Pool. The proposed regulations implement Senate Bill 338 passed by the 1988 Kentucky General Assembly.

This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on March 16, 1990. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on March 12, 1990. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on March 1, 1990.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: Roger Calhoun, Deputy Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this notice will be available for review at the addresses listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed

amendment by contacting OSM's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233–7327

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937–2828

Department for Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: Roger Calhoun, Deputy Director, Lexington Field Office, telephone (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1982, the Secretary of the Interor conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, Federal Register (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of Amendment

By letter dated September 18, 1989, (Administrative Record No. KY–916), Kentucky submitted proposed regulations to revise 405 KAR 10:200, the regulations governing the Kentucky Bond Pool. By a letter dated January 19, 1990, (Administrative Record No. KY–957), Kentucky resubmitted proposed regulations to revise 405 KAR 10:200, the Kentucky Bond Pool regulations. The proposed regulations implement the statute changes to Senate Bill 338 passed by the 1988 Kentucky General Assembly.

The proposed regulations delete from the definition of "member" the requirement that only permits held by bond pool members can be covered by the pool. Kentucky Revised Statutes (KRS) 350.720 (14) authorizes pool coverage for nonmember permittees to participate in the abandoned mine land enhancement program.

The proposed regulations relax the criteria used to determine eligibility for membership into the Kentucky Bond Pool. The proposed regulation clarifies that bond pool membership will be denied to persons who have mined without first obtaining a permit (wildcat miners), rather than persons who have operated on expired permits. The proposed regulations allow the Bond Pool Commission greater flexibility in applying compliance record criteria in determining eligibility. The Bond Pool Commission will be authorized to defer action on an application for pool membership until violations and penalty assessments that could affect the applicant's eligibility or membership rating have been resolved. The proposed regulations also make several nonsubstantive changes throughout for compliance with KRS Chapter 13A provisions.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Kentucky satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4 p.m. on March 1, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM, Lexington Field Office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES."** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

1. Compliance with the National Environment Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 5, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90–3472 Filed 2–13–90; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP8F3634/P501; FRL-3685-8]

Propionic Acid; Proposed Exemptions From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that exemptions from the requirement of a tolerance be established for residues of propionic acid in or on the following raw agricultural commodities (RACs): cottonseed, peanuts, rice grain, and soybeans. These exemptions were requested by Stop-Shock, Inc.

DATES: Comments, identified by the document control number, [PP8E3634/P501], must be received on or before March 16, 1990.

ADDRESSES: By mail, submit comments to: Public Information Branch, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM) 21, (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of June 21, 1989 (54 FR 26056), which announced that Stop Shock, Inc., of Dallas, TX, had submitted pesticide petition (PP) 8F3634 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose that an exemption from the requirement of a tolerance under 40 CFR 180.1023 be established for residues of propionic acid in or on the following raw agricultural commodities: cottonseed, peanuts, rice grain, and soybeans. The proposal limited the use of the treated commodities to "for use as animal feed only."

The National Cottonseed Products Association, the National Cotton Council of America, and the Union Carbide Corporation commented on the proposed rule. These commentors requested that the "for use as animal feeds only" restriction be eliminated because stored cottonseed is not normally segregated for animal feed or for crushing into oil at either the gins or the cottonseed oil mills. In support of this request, they noted that the rule as proposed could cause an unnecessary economic and regulatory burden on the cottonseed crushing industry and the cottonseed oil refiners. They argued that there was no justification in terms of safety concerns for this restriction.

The Agency agrees and is therefore reproposing this rule without the restriction for all the covered commodities. This change is consistent with the current 40 CFR 180.1023, which exempts propionic acid from the requirements of a tolerance on a variety of raw agricultural commodities. There is no restriction in 40 CFR 180.1023 limiting the use of the treated commodities to only animal feeds.

Propionic acid products are currently registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, with a "for use as animal feed only" restriction. This restriction is a result of the fact that propionic acid can impart an off odor and taste to the treated commodity, which makes it undesirable as a human food and subject to a lower U.S. Department of Agriculture grading category. If propionic acid products were found to be efficacious at application rates that do not impart the off odor and taste to the treated commodities, the registrations could be amended to delete the restriction at the lower application rates.

The data submitted in the petition and other relevant material have been evaluated. Propionic acid is to be applied without dilution and immediately after harvest by use of low-pressure nozzles to achieve uniform coverage as the commodity passes by the spraying applicator. The purpose of the postharvest application is to prevent fungal growth in and on the freshly harvested commodity.

According to the proposed dosage rate, the maximum residue of propionic acid in or on the the proposed RACs cottonseed, peanuts, rice grain, and soybeans is estimated to be 300 ppm, which is far below the maximum 8,000 ppm residue level from existing postharvest applications.

Exemptions from the requirement of a tolerance for residues of propionic acid are currently established under 40 CFR 180.1023 in or on stored grains of barley, corn, oats, sorghum, and wheat with a maximum residue level of 8,000 ppm from postharvest applications.

Propionic acid occurs naturally as a compound in poultry and is an intermediate product of digestion. It is produced in large quantities in ruminants (1970, *J. Agric. Food Chem.*, 19:1204). In nonruminants, propionic acid is one of the metabolic products of the breakdown of several amino acids and is utilized in the fatty acid metabolism in the body. Propionic acid is a product of the fermentation process of wood pulp waste using bacteria (Wayman et al., U.S. Patent 3,067,107; 1967) and is a natural byproduct of alfalfa hay fermentation. The action of microorganisms on a variety of materials will yield propionic acid (Merck Index, 10th Ed., 1983, p. 1127). Propionic acid is also used in veterinary medicine as an antiketogenetic or glucogenic agent, for stimulation of rumen development in calves, as a topical antifungal agent in various dermatoses, and for treatment of dermatophytic infections. It is also used as a bee repellent. Propionic acid occurs naturally in Swiss cheese at levels as high as 1.0 percent, and it is used as a synthetic flavor ingredient. Propionic acid derivatives are also used as drugs for humans, e.g., ibuprofen, fenprofen, flurbiprofen, ketoprofen, and naproxen. Ibuprofen is available over-the-counter in many forms.

Data submitted to the Agency on propionic acid indicate a Toxicity Category III for oral, dermal, and inhalation toxicity and primary eye irritation and a Toxicity Category IV for primary dermal irritation. Long-term feeding studies in the open literature found that propionic acid acted directly on the forestomach of rats in the region of the limiting ridge producing pronounced hyperplasia, hyperplastic ulcers, and papillomas when administered at high doses (Griem, *Bundesgesundheitsblatt*, 28, 11, 322-327, 1987; *Toxicology*, 38, 1, 103-117, 1986). No changes were observed in the glandular stomach, and the human does

not have a comparable region to the rat forestomach. Data from a preliminary report on a propionic acid 90-day study in dogs showed focal and diffused hyperplastic changes in the esophagus of exposed dogs. The results indicate that propionic acid can mechanically irritate esophageal tissue. Mutagenicity studies on propionic acid have not shown any mutagenic potential (Basler et al., *Food Chem. Toxicol.*, 25(4), 287–290, 1987). The propionic acid derivatives such as ibuprofen have been shown to produce gastrointestinal (gastric, duodenal, and intestinal) erosions in experimental animals and are known to produce gastrointestinal side effects in humans (Goodman-Gilman, Pharmacological Basis of Therapeutics, Sixth Ed., 1980).

Extensive literature searches of open literature information data bases including TOXLINE, TOXLIT, TOXLIT 65, MEDLINE, MEDLINE83, MEDLINE80, CANCERLIT, TOXNET (HSDB), RTECS(NIOSH), and TSCAINV have not indicated special hazards relative to propionic acid.

In support of its request, the petitioner noted that propionic acid has been used in food crops for many years with no known toxicity problems. The U.S. Food and Drug Administration has granted a generally recognized as safe (GRAS) status to propionic acid as a chemical preservative, adjuvant to pesticide chemicals, and food additive. These are referenced under 21 CFR 182.99, 184.1081, and 582.3081.

Sodium propionate (40 CFR 180.1015) is also exempted from the requirement of a tolerance for residues when used as follows: (1) as a fungicide in the production of garlic and (2) for postharvest application as a preservative on salad greens and vegetables intended for consumption as salads.

Based on the above information considered by the Agency, the exemptions from the requirement of a tolerance for the residues of propionic acid in or on cottonseed, peanuts, rice grain, and soybeans would protect the public health. Therefore, it is proposed that the exemptions be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 8F3634/P501]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 1, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1023 is revised to read as follows:

§ 180.1023 Propionic acid; exemptions from the requirement of a tolerance.

(a) Postharvest application of propionic acid or a mixture of methylene bispropionate and oxy(bismethylene) bisproprionate when used as a fungicide is exempted from the requirement of a tolerance for residues in or on the following raw agricultural commodities:

Commodities
Alfalfa (Post-H)
Barley grain (Post-H)
Bermuda grass (Post-H)
Bluegrass (Post-H)
Clover (Post-H)
Corn grain (Post-H)
Cowpea hay (Post-H)
Fescue (Post-H)
Lespedeza (Post-H)
Lupines (Post-H)
Oat grain (Post-H)
Orchard grass (Post-H)
Peanut hay (Post-H)
Peavine hay (Post-H)
Rye grass (Post-H)
Sorghum grain (Post-H)
Soybean hay (Post-H)
Sudan grass (Post-H)
Timothy (Post-H)
Vetch (Post-H)
Wheat grain (Post-H)

(b) Postharvest application of propionic acid when used as a fungicide is exempted from the requirement of a tolerance for residues in or on the following raw agricultural commodities:

Commodities
Cottonseed (Post-H)
Peanuts (Post-H)
Rice grain (Post-H)
Soybeans (Post-H)

[FR Doc. 90–3244 Filed 2–13–90; 8:45 am]
BILLING CODE 6560–50–D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6981]

Proposed Flood Elevation Determinations, Georgia et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restrictions unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67–[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E. O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
GEORGIA	
Jackson County (unincorporated areas)	
Walnut Creek:	
Just upstream of State Route 332	*733
Just downstream of State Route 60	*766
Cabin Creek:	
At mouth	*663
Just downstream of Cabin Creek Road	*693
Middle Oconee River:	
At county boundary	*619
Just downstream of State Route 330	*649
Big Bear Creek:	
At county boundary	*624
About 1,800 feet upstream of county boundary	*628
Little Bear Creek:	
At mouth	*626
About 1,200 fee upstream of county boundary	*719
North Oconee River:	
About 1,825 fee downstream of confluence of Cabin Creek	*662
About 675 feet upream of confluence of Cabin Creek	*664
Maps available for inspection at the Department of Planning and Development, County Administration Building, Jefferson, Georgia.	
Send comments to The Honorable Henry Robinson, Chairman, Board of Commissioners, Jackson County, P.O. Box 68, Jefferson, Georgia 30549.	
KENTUCKY	
Laurel County (unincorporated areas)	
Little Rockcastle River;	
At mouth	*656
At confluence of Hazel Patch Creek	*867
Hazel Patch Creek:	
At mouth	*867
About 1,200 feet upstream of Hazel Patch Road	*869
Lake Cumberland: Within community	*750
Lynn Camp Creek:	
About 1,40 feet upstream of confluence of Horse Creek	*1063
At county boundary	*1066
Maps available for inspection at the County Courthouse, London, Kentucky.	
Send comments to The Honorable Johnny Lewis, Judge/Executive, Laurel County, County Courthouse, London, Kentucky 40741	
MAINE	
Island Falls (Town), Aroostook County	
Fish Stream:	
At confluence with W. Branch Mattawamkeag River	*463
At upstream corporate limits	*465
Sly Brook:	
At confluence with W. Branch Mattawamkeag River	*461
Approximately .45 mile upstream of U.S. Route 2	*461
Dyer Brook:	
At confluence with W. Branch Mattawamkeag River	*447
Approximately 280 feet upstream of U.S. Route 2	*447
West Branch Mattawamkeag River:	
At confluence with Upper Mattawamkeag River	*438
At upstream corporate limits	*465
Mattawamkeag Lake: Entire shoreline within community	*438
Upper Mattawamkeag Lake: Entire shoreline within community	*438
Pleasant Lake: Entire shoreline within community	*537
Maps available for inspection at the Island Falls Municipal Building, Island Falls, Maine.	
Send comments to The Honorable Wallace Townsend, Chairman of the Town of Island Falls Board of Selectmen, Aroostook County, Municipal Building, Island Falls, Maine 04747.	
Lyman (Town), York County	
Kennebunk Pond: Entire shoreline within community	275*
Roberts-Wadley Pond: Entire shoreline within community	276*
Bunganut Pond: Entire shoreline within community	278*
Swan Pond: Entire shoreline within community	282*
Maps available for inspection at the Town Hall, R.R. 5, Lyman, Maine.	
Send comments to The Honorable George Davis, Chairman of the Town of Lyman Board of Selectmen, York County, Town Hall, R.R. 5, P.O. Box 155, Lyman, Maine 04005.	
MICHIGAN	
Adrian (Township), Lenawee County	
Wolf Creek:	
About 1.9 miles downstream of Birnwick Road	*763
Just downstream of U.S. Highway 223	*804
Maps available for inspection at the Township Hall, 2907 Tipton Highway, Adrian, Michigan.	
Send comments to The Honorable Ireno Busato, Township Supervisor, Township of Adrian, 2907 Tipton Highway, Adrian, Michigan 49221.	
OHIO	
Belle Valley (Village), Noble County	
West Fork Duck Creek:	
Just downstream of Interstate 77	*743
Approximately 3100 feet upstream of Main Street	*746
Maps available for inspection at the Municipal Building, Belle Valley, Ohio.	
Send comments to The Honorable Larry Veloski, Mayor, Village of Belle Valley, Municipal Building, Belle Valley, Ohio 43714.	
Hocking County (unincorporated areas)	
Hocking River:	
About 400 feet downstream of State Route 328	*718

About 3,400 feet upstream of confluence of Clear Creek	*763
Rush Creek:	
At western county boundary	*773
About 3,400 feet upstream of Bremen Road	*785
Bear Run:	
At mouth	*782
About 0.83 mile upstream of Bremen Road	*801
Oldtown Creek:	
About 3,800 feet downstream of Sutton Road	*726
Just downstream of Gallagher Road	*743
Monday Creek:	
About 3.75 miles downstream of State Route 278	*681
About 1,300 feet upstream of State Route 278	*696
Snow Fork:	
About 600 feet downstream of confluence of Brush Fork	*701
About 600 feet upstream of confluence of Snow Fork Tributary	*719
Snow Fork Tributary:	
At mouth	*717
Just upstream of Spencer Hollow Road	*731
Salt Creek:	
About 3,000 feet downstream of confluence of Brimstone Creek	*727
About 2,750 feet upstream of County Route 174	*736
Laurel Run:	
Just downstream of State Route 180	*745
About 3,600 feet upstream of State Route 180	*756

Maps available for inspection at the County Courthouse, 1 East Main Street, Logan, Ohio.

Send Comments to The Honorable Carl Risch, President, Board of Commissioners, Hocking County, 1 East Main Street, Logan, Ohio 43138.

Morgan County (unincorporated areas)

Muskingum River:	
At downstream county boundary	*640
At upstream county boundary	*679

Maps available for inspection at the County Courthouse, 19 East Main Street, McConnelsville, Ohio.

Send comments to The Honorable Doug Matheny, President, County Commissioners, Morgan County, 19 East Main Street, McConnelsville, Ohio 43756.

Rutland (Village), Meigs County

Little Leading Creek:	
About 1.0 mile upstream of mouth	*573
About 1,550 feet upstream of Main Street	*581

Maps available for inspection at the Village Hall, Civic Center, Rutland, Ohio.

Send comments to The Honorable Jim Fink, Mayor, Village of Rutland, Village Hall, Civic Center, Rutland, Ohio 45775.

Springdale (City), Hamilton County

Springdale Tributary:	
Just upstream of Chesterdale Road	*600
Just downstream of Interstate 275	*634
Just upstream of Interstate 275	*648
Just downstream of Princeton Road	*648
Just upstream of Princeton Road	*659
Just downstream of Springfield Road	*694
Just upstream of Springfield Road	*701
Just downstream of Cloverdale Avenue	*706
Just upstream of Cloverdale Avenue	*711
Northland Road Tributary:	
At mouth	*660
Just downstream of Kemper Road	*673
Just upstream of Kemper Road	*679
Just downstream of Springfield Road	*718
About 400 feet upstream of Springfield Road	*727

Maps available for inspection at the Municipal Building, 12105 Longview Avenue, Springfield, Ohio.

Send comments to The Honorable Vern French, Mayor, City of Springdale, Municipal Building, 12105 Longview Avenue, Springdale, Ohio 45246.

PENNSYLVANIA

Benzinger (Township), Elk County

Elk Creek:	
Approximately 260 feet downstream of downstream corporate limits	*1,474
At upstream corporate limits	*1,587
North Branch Elk Creek:	
At downstream corporate limits	*1,671
At the Wilson Road (T-406)	*1,784
West Creek:	
At downstream corporate limits	*1,289
Approximately .5 mile upstream of Jackson Road (T-432)	*1,430

Maps available for inspection at the Township Building, 113 South Michael Road, St. Marys, Pennsylvania.

Send comments to The Honorable Ben Hoffman, Chairman of the Township of Benzinger Board of Supervisors, Elk County, 113 South Michael Road, St. Marys, Pennsylvania 15857.

Bigler (Township), Clearfield County

Clearfield Creek:	
Approximately 3.17 miles upstream of downstream corporate limits	*1,329
Approximately 200 feet downstream of State Route 53	*1,339
Approximately 5.56 miles upstream of downstream corporate limits	*1,341

Maps available for inspection at the Township Building on Pennsylvania Route 53 in the Village of Madera, Pennsylvania.

Send comments to The Honorable Robert J. Greenaway, Chairman of the Township of Bigler Board of Supervisors, Clearfield County, Box 567, Madera, Pennsylvania 16661.

Butler (Township), Schuylkill County

Mahanay Creek:	
At downstream CONRAIL crossing	*811
At extreme upstream corporate limits	*1,091
Shenandoah Creek:	
At the Borough of Girardville corporate limits	*967
At upstream corporate limits	*1,006

Maps available for inspection at the Township Building, 211 Broad Street, Ashland, Pennsylvania.

Send comments to The Honorable Patricia Wyatt, Secretary of the Township of Butler Board of Supervisors, Schuylkill County, 211 Broad Street, Fountain Springs, Ashland, Pennsylvania 17921.

Chester Hill (Borough), Clearfield County

Moshannon Creek:	
At downstream corporate limits	*1,425
At upstream corporate limits	*1,432

Maps available for inspection at the Borough Building, 920 Walton Street, Philipsburg, Pennsylvania 16866.

Send comments to The Honorable Joshua Harrington, Acting President of the Chester Hill Borough Council, Clearfield County, 920 Walton Street, Philipsburg, Pennsylvania 16866.

Forks (Township), Sullivan County

Loyalsock Creek:	
At the downstream corporate limits	*931
Approximately 3.3 miles upstream of corporate limits	*987

Maps available for inspection at the Township Building, Forks, Pennsylvania.

Send comments to The Honorable James Warburton, Chairman of the Township of Forks Board of Supervisors, Sullivan County, R.D. 2, New Albany, Pennsylvania 18833.

Fox (Township), Elk County

Little Toby Creek:	
At downstream corporate limits	*1,516
Approximately 1,150 feet upstream of State Highway 2005	*1,756

Maps available for inspection at the Township Building, Kersey, Pennsylvania.

Send comments to The Honorable William Mosier, Chairman of the Township of Fox Board of Supervisors, Elk County, 510 Main Street, Kersey, Pennsylvania 15846.

Glenburn (Township), Lackawanna County

Unnamed Tributary to South Branch Tunkhannock Creek:	
Approximately 170 feet downstream of downstream corporate limits	*985
At upstream corporate limits	*1,078
Ackerly Creek:	
At confluence with Unnamed Tributary to South Branch Tunkhannock Creek	*1,043
At L.R. 35022 (Glenburn Road)	*1,074

Map available for inspection at the Township Building, Dalton, Pennsylvania.

Send comments to The Honorable Richard Stoeckel, Chairman of the Township of Glenburn Board of Supervisors, Lackawanna County, R.D. 3, Dalton, Pennsylvania 18414.

Hillsgrove (Township), Sullivan County

Loyalsock Creek:	
Aproximately 4.7 miles downstream of S.R. 87	*783
At upstream corporate limits	*932

Maps available for inspection at the Township Building, Forksville, Pennsylvania.

Send comments to The Honorable Sherman Higley, Chairman of the Township of Hillsgrove Board of Supervisors, Sullivan County, R.D. 1, Forksville, Pennsylvania 18614

Rush (Township), Centre County

Moshannon Creek:	
Approximately .7 mile downstream of L.R. 864	*1,394
Approximately .6 mile upstream of L.R. 864	*1,403
Approximately 1.4 miles downstream of confluence of One Mile Run	*1,413
Approximately .5 mile uptream of U.S. Route 322	*1,425

Approximately .9 mile downstream of State Route 970	*1,452
Approximately 1,400 feet upstream of Stone Street	*1,463
Cold Stream:	
At the confluence with Moshannon Creek	*1,421
Approximately 375 feet upstream of corporate limits	*1,441
Approximately 1.0 mile upstream of U.S. Route 322	*1,468
Approximately 1.6 miles upstream of U.S. Route 322	*1,490

Maps available for inspection at the Township Building, Logan and Richard Streets, Philipsburg, Pennsylvania.

Send comments to The Honorable John A. Shannon, Chairman of the Township of Rush Board of Supervisors, Centre County, P.O. Box 152, Philipsburg, Pennsylvania 16866.

Shrewsbury (Township), Lycoming County

Munch Creek:	
At approximately 3,450 feet downstream of downstream corporate limits	*672
At upstream corporate limits	*787

Maps available for inspection at the secretary's home. R.D. 1, Box 337, Hughesville, Pennsylvania, please contact at (717) 584-3079.

Send comments to The Honorable Josiah Alford, Chairman of the Township of Shrewsbury Board of Supervisors, Lycoming County, R.D. 1, Hughesville, Pennsylvania 17737.

TENNESSEE

Blaine (City), Grainger County

Richland Creek:	
About 1450 Feet downstream of Milligan Lane	*909
Just downstream of Fennel Road	*914

Maps available for inspection at the City Hall, Blaine, Tennessee.

Send comments to The Honorable Adrin Cameron, Mayor, City of Blaine, P.O. Box 85, Blaine, Tennessee 37709-0085.

Jefferson County (unincorporated areas)

Holston River:	
At downstream county boundary	*854
Just downstream of Cherokee Dam	*935
Lost Creek	
At sink hole	*937
Just downstream of Ken Manley Road	*947
Just upstream of abandoned railroad spur	*961
Just upstream of Norfolk South Railway	*991
Piedmont Branch:	
Just uptream of Dalton Road	*1007
About 2000 feet upstream of (upstream Dumplin Valley Road crossing)	*1045
Dance Branch:	
At mouth	*1015
About 600 feet upstream of Dumplin Valley Road	*1070
Byrd Spring Branch:	
At mouth	**1075
Just downstream of upstream Black Oak Road (upstream crossing)	*1110
Just upstream of upstream Black Oak Road (upsteam crossing)	*1119
Just downstream of Tarr Lane	*1128
Just upstream of Tarr Lane	*1133
About 2000 feet upstream of Tarr Lane	*1133
Leadvale Creek:	
About 300 feet downstream of Old Leadvale Road	*1082
Just downstream of Old Leadvale Road	*1084
Just upstream of Old Leadvale Road	*1089
About 1400 feet upstream of Old Leadvale Road	*1094
Cherokee Lake: Within community	*1075

Maps available for inspection at the County Courthouse, Dandridge, Tennessee.

Send comments to The Honorable Gary Holloway, County Executive, Jefferson County, P.O. Box 726, Dandridge, Tennessee 37725.

VIRGINIA

Claremont (Town), Surry County

James River and adjoining estuaries: Entire shoreline with community	*8.5

Maps available for inspection at the Town Hall, Claremont, Virginia.

Send comments to The Honorable Sue Gilbert, Mayor of the Town of Claremont Surry County, P.O. Box 53, Claremont, Virginia 23899.

Suffolk (City), Independent City

Shingle Creek:	
At confluence with Nansemond River	*8.5
Approximately 650 feet upstream of State Route 642	*27
Hampton Roads affecting Nansemond River:	
Approximately 1,500 feet southeast of Intersection of Clubhouse Drive and Fairway Drive	*8.5
At Martin Road approximately 1,200 feet east from intersection with Eclispe Drive	*9
At Barrel Point	*12

Maps available for inspection at the Department of Community Development, Suffolk Municipal Center, Suffolk, Virginia.

Send comments to The Honorable John L. Rowe, Jr., Suffolk City Manager, P.O. Box 1858, Suffolk, Virginia 23434.

WISCONSIN

Adams county (unincorporated areas)

Little Roche A Cri Creek:	
Just upstream of County Highway 2	*883
Just downstream of County Highway J	*897
White Creek:	
At mouth	*859
Just downstream of Powerhouse Dam	*867
Just upstream of Powerhouse Dam	*879
At confluence of Fairbanks Creek	*885
Campbell Creek:	
At confluence of Fairbanks Creek	*885
Just downstream of Easton Dam	*897
Castle Rock Lake: Along shoreline	*883
Wisconsin River:	
At southern county boundary	*848
Just downstream of Castle Rock Dam	*864
Just downstream of Petenwell Dam	*894
At northern county boundary	*929
Petenwell Lake: Along shoreline	*925
Friendship Lake: Along shoreline	*937

Maps available for inspection at the Planning and Zoning Department, County Courthouse, Friendship, Wisconsin.

Send comments to The Honorable George Dixon, President, County Board, Adams County, County Courthouse, Friendship, Wisconsin 53934.

Friendship (Village), Adams County

Little Roche a Cri Creek:	
About 0.7 mile downstream of State Highway 13	*921
Just downstream of Friendship Dam	*925
Friendship Lake: Along shoreline	*937

Maps available for inspection at the Village Hall, 102 West Second, Friendship, Wisconsin.

Send comments to The Honorable George P. Bredesen, Village President, Village of Friendship, Village Hall, 102 West Second, Friendship, Wisconsin 53934.

Montello (City), Marquette County

Montello River:	
At mouth	*774
Just downstream of Montello River Dam	*786
Lake Montello: Within community	*787
Fox River:	
About 2400 feet downstream of Main Street	*773
Just downstream of Buffalo Lake Dam	*775
Buffalo Lake: Within community	*775

Maps available for inspection at the City Hall, 20 Underwood Avenue, Montello, Wisconsin.

Send comments to The Honorable Gerol M. Smart, Mayor, City of Montello, City Hall, P.O. Box 39, 20 Underwood Avenue, Montello, Wisconsin 53949.

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Kentucky	Paintsville, City, Johnson County.	Paint Creek	At confluence with Levisa Fork	*613	*614
			At upstream corporate limits	*614	*614

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	*Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Levisa Fork	At downstream corporate limits	*610	*612
			At upstream corporate limits	*614	*615
Maps available for inspection at the City Hall, Paintsville, Kentucky. Send comments to The Honorable John D. Preston, Mayor of the City of Paintsville, Johnson County, P.O. Box 71, Paintsville, Kentucky 41240.					
Missouri	City of Portageville, New Madrid County.	Portage Bayou (main ditch)	Within Community	*281	*277
		Portage Open Bay	About 3300 feet downstream of Huffman Avenue.	*279	*277
			Just upstream of U.S. Highway 61	*281	*277
Maps available for inspection at the City Hall, Portageville, Missouri. Send comments to The Honorable Arvil Adams, Mayor, City of Portageville, P.O. Drawer B. Portageville, Missouri 63873.					
Pennsylvania	Elkland, Township, Tioga County.	Cowanesque River	Approximately 2,925 feet above downstream corporate limits.	None	*1,125
			At upstream corporate limits	None	*1,137
Maps available for inspection at the Township Building, Elkland, Pennsylvania. Send comments to The Honorable Larry G. McLean, Chairman of the Township of Elkland, Tioga County, R.D. 1, Box 14, Elkland, Pennsylvania 16920.					

Issued: February 6, 1990.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 90-3457 Filed 2-13-90; 8:45 am]

BILLING CODE 6718-03-M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 613

Privacy Act Regulations

AGENCY: National Science Foundation (NSF.)

ACTION: Proposed rule.

SUMMARY: This proposed rule adds 45 CFR 613.6(c) and 613.6(d) to exempt a system of records from certain sections of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j) and (k).

DATES: Comments must be received on or before March 16, 1990.

ADDRESSES: Interested persons may submit comments to: Linda G. Sundro, Inspector General, Office of Inspector General, NSF Washington, DC 20550 (202-357-9457).

FOR FURTHER INFORMATION CONTACT: Philip L. Sunshine, Counsel to the Inspector General, Office of Inspector General, NSF, Washington, DC 20550 (202-357-9457).

SUPPLEMENTARY INFORMATION: Addition of 45 CFR 613.6(c) and 613.6(d) is necessary to provide for exemption of a Privacy Act system of records: "Office of Inspector General Investigative Files." The exemptions are authorized by the Privacy Act of 1974, 5 U.S.C. 552a(j)(2), and (k)(2) as amended. A systems notice has been published in proposed form elsewhere in today's issue of the **Federal Register.**

In accordance with 5 U.S.C. 552a(j)(2), information maintained in the system of records of the Office of Inspector General (OIG) is exempt from all provisions of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11) and (i), to the extent that information in the systems pertains to criminal law enforcement. This includes, but is not limited to, information compiled for the purpose of identifying criminal offenders and alleged offenders and consisting of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; information compiled for the purpose of a criminal investigation, including reports of informants and investigators, that is associated with an identifiable individual; or reports of enforcement of the criminal law from arrest or indictment through release from supervision.

The disclosure of information contained in the criminal investigative files, including the names of persons or agencies to whom the information has been transmitted, would substantially compromise the effectiveness of OIG investigations. Knowledge of such investigations could enable suspects to take such action as is necessary to prevent detection of criminal activities, conceal or destroy evidence or escape prosecution. Disclosure of this information could lead to the intimidation of, or harm to, informants, witnesses, and their families, and could jeoparadize the safety and well-being of investigative and related personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified or retained would significantly impede the effectiveness of OIG investigatory activities and, in addition, could preclude the apprehension and successful prosecution of persons engaged in fraud or criminal activity.

Information in these systems is maintained pursuant to official federal law enforcement and criminal investigation functions of the Office of Inspector General. The exemptions are are needed to maintain the integrity and confidentiality of criminal investigations, to protect individuals from harm, and for the following reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his/her request. These accountings must state the date, nature and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation and could seriously impede or compromise the investigation, endanger the physical

safety of confidential sources, witnesses, law enforcement personnel and their families and lead to the improper influencing of witnesses, the destruction of evidence or the fabrication of testimony.

(2) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of disspute made by the agency in accordance with subsection (d) of the Act. Since these systems of records are being exempted from subsection (d) of the Act, concerning access to records, this section is inapplicable to the extent that these systems of records will be exempted from subsection (d) of the Act.

(3) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him/her, to request amendment to such records, to request a review of an agency decision not to amend such records and to contest the information contained in such records. Granting access to records in these systems of records could inform the subject of an investigation of an actual or potential criminal violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his/her activities, of the identity of confidential sources, witnesses, and law enforcement personnel and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation, endanger the physicial safety of confidential sources, witnesses, law enforcement personnel and their families, lead to the improper influencing of witnesses, the destruction of evidence or the fabrication of testimony and disclose investigative techniques and procedures. In addition, granting access to such information could dissclose classsified, security-sensitive or confidential business information and could constitute an unwarranted invasion of the personal privacy of others.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by executive order of the President. The application of this provision could impair investigations and law enforcement because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation, the investigator may obtain information which is incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation, the investigator may obtain information concerning the violation of laws other than those which are within the scope of his/her jurisdiction. In the interest of effective law enforcement, OIG investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for other law enforcement agencies.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits and privileges under federal programs. The application of this provision could impair investigations and law enforcement by alerting the subject of an investigation, thereby enabling the subject to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence or to fabricate testimony. Moreover, in certain circumstances the subject of an investigation cannot be required to provide information to investigators and information must be collected from other sources. Furthermore, it is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

(6) 5 U.S.C. 552a(e)(3) requires an agency to inform each person whom it asks to supply information, on a form that can be retained by the person, of the authority under which the information is sought and whether disclosure is mandatory or voluntary; of the principal purposes for which the information is intended to be used; of the routine uses which may be made of the information; and of the effects on the person, if any, of not providing all or any part of the requested information. The application of this provision could provide the subject of an investigation with substantial information about the nature of that investigation that could interfere with the investigation. Moreover, providing such a notice to the subject of an investigation could seriously impede or compromise an undercover investigation by revealing its existence and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(7) 5 U.S.C. 552a(e)(4) (G) and (H) require an agency to publish a **Federal Register** notice concerning its procedures for notifying an individual, at his/her request, if the system of records contains a record pertaining to him/her, how to gain access to such a record and how to contest its content. Since these systems of records are being exempted from subsection (f) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable to the extent that these systems of records will be exempted from subsection (f) of the Act. Although the systems would be exempt from these requirements, OIG has published information concerning its notification, access, and contest procedures because, under certain circumstances, OIG could decide it is appropriate for an individual to have access to all or a portion of his/her records in these systems of records.

(8) 5 U.S.C. 552a(e)(4) (I) requires an agency to publish a **Federal Register** notice concerning the categories of sources of records in the system of records. Exemption from this provision is necessary to protect the confidentiality of the sources of information, to protect the privacy and physical safety of confidential sources and witnesses, and to avoid the disclosure of investigative techniques and procedures. Although the systems will be exempt from this requirement, OIG has published such a notice in broad generic terms.

(9) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual. Since the Act defines "maintain" to include the collection of information, complying with this provision could prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In collecting information for criminal law enforcement purposes, it is not possible to determine in advance what information is accurate, relevant, timely, and complete. Facts are first gathered and then placed into a logical order to prove or disprove objectively the criminal behavior of an individual. Material which seem unrelated, irrelevant, or incomplete when collected can take on added meaning or significance as the investigation progresses. The restrictions of this provision could interfere with the

preparation of a complete investigative report, thereby impeding effective law enforcement.

(10) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. Complying with this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(11) 5 U.S.C. 552a(f)(1) requires an agency to promulgate rules which shall establish procedures whereby an individual can be notified in response to his/her request if any system or record named by the individual contain a record pertaining to him/her. The application of this provision could impede or compromise an investigation or prosecution if the subject of an investigation were able to use such rules to learn of the existence of an investigation before it could be completed. In addition, mere notice of the fact of an investigation could inform the subject and others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since these systems would be exempt from subsection (d) of the Act. Although these systems would be exempt from the requirements of subsection (f) of the Act, OIG has promulgated rules which establish agency procedures because, under certain circumstances, it could be appropriate for an individual to have access to all or a portion of his/her records in these systems of records.

(12) 5 U.S.C. 552a(g) provides for civil remedies if an agency fails to comply with the requirements concerning access to records under subsections (d)(1) and (3) of the Act; maintenance of records under subsection (e)(5) of the Act; and any other provision of the Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual, since these systems of records would be exempt from subsections (c)(3), and (4), (d), (e)(1), (2), (3) and (4)(G) and (H), (e)(1) through (5) and (8), and (f) of the Act, the provisions of subsection (g) of the Act would be inapplicable to the extent that these systems of records will be exempted from those subsections of the Act.

Under 5 U.S.C. 552a(j)(2), the head of any agency may by rule exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the system of records is maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws and which consists of:

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

The OIG Investigative Files contain information of the type described above and are maintained by the Office of Inspector General, a component of NSF which performs as one of its principal functions activities pertaining to the enforcement of criminal laws. Authority for the criminal law enforcement activities of the Office of Inspector General is the Inspector General Act of 1978, 5 U.S.C. app. That legislation authorizes the Office of Inspector General to conduct investigations relating to programs and operations of the NSF.

Under 5 U.S.C. 552a(k)(2), the head of any agency may by rule exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is investigative material compiled for law enforcement purposes, other than material within the scope of 5 U.S.C. 552(a)(j)(2).

The OIG Investigative Files contain investigative material compiled for law enforcement purposes and maintained by the OIG. The OIG is authorized by the investigation relating to programs and operations of the National Science Foundation.

Under 5 U.S.C. 552a(k)(2), the information in the OIG's Investigative Files is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(6), (H) and (I), and (f) insofar as they contain investigatory materials compiled for law enforcement purposes that is not within the scope of the exemption of 5 U.S.C. 552a(j)(2). The exemption is needed to maintain the integrity and confidentiality of law enforcement investigations, to protect individuals from harm, and for the reasons described above discussing the exemption under 5 U.S.C. 552a(j)(2) being authorized concurrently.

This proposed rule has been reviewed under Executive Order No. 12291 and has been determined not to be a "major rule" since it will not have an annual effect on the economy of $100 million or more.

In addition, it has been determined that this proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 45 CFR Part 1

Privacy act.

For the reasons set out in the preamble, it is proposed to amend 45 CFR, chapter IV, part 613, as follows:

PART 613—PRIVACY ACT REGULATIONS

1. The authority citation for part 613 continues to read as follows:

Authority: 5 U.S.C. 552a(7)]

2. Section 613.6(c) and (d) would be added as follows:

§ 613.6 Exemptions.

* * * * *

(c) *OIG Files Compiled for the Purpose of a Criminal Investigation and for Related Purposes.* Pursuant to 5 U.S.C. 552a (j)(2), the Floundation hereby exempts the system of records entitled "Office of Inspector General Investigative Files," insofar as it consists of information compiled for the purpose of a criminal investigation or for other purposes within the scope of 5 U.S.C. 552a(j)(2), from the application of 5 U.S.C. 552a, except for subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10) and (i).

(d) *OIG Files Compiled for Other Law Enforcement Purposes.* Pursuant to 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4), (G), exempts the systems of records entitled "Office of Inspector General Investigative Files," insofar as it consists of information compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2), from the application of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f).

Dated: February 5, 1990.

Charles H. Hertz.

General Counsel.

[FR Doc. 90-3373 Filed 2-13-90; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 575

[Docket No. 90-04; Notice 1]

RIN 2127-AD21

Federal Motor Vehicle Safety Standards: New Pneumatic Tires for Passenger Cars

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Standard No. 109, *New Pneumatic Tires*, specifies that the maximum permissible inflation pressure for each tire must be either 32, 36, 40, or 60 psi, or 240, 280, 300, or 340 kPa. In response to a petition from Continental AG, Daimler-Benz, and General Tire Inc. to allow the "CT" tire, which has run-flat capability, this notice proposes to amend Standard No. 109 to permit tires with maximum inflation pressures of 290, 330, 350, or 390 kPa. NHTSA tentatively concludes that the CT tire and rim concept has the potential for increased safety, especially in the deflated condition. The agency also tentatively concludes that allowing the CT tire may result in incidental benefits such as increased fuel efficiency. Conforming amendments would be made throughout the standard so that test criteria suitable for these new pressures would be established for the required performance tests.

DATES: Comments on this notice must be received on or before April 16, 1990. If adopted as a final rule, these requirements would become effective 30 days after publication of a final rule in the **Federal Register**.

ADDRESSES: Comments should refer to Docket No. 90-04; Notice 1 and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (Docket Room hours 9:30 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-4803.

SUPPLEMENTARY INFORMATION:

General Information

Federal Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires*, (49 CFR 571.109) specifies tire dimensions and laboratory test requirements for bead unseating resistance, tire strength, tire endurance, and high speed performance; defines tire load ratings; and specifies labeling requirements for new pneumatic tires used on passenger cars.

The general performance requirements, as specified in section S4.2.1 and the test requirements for physical dimensions in section S4.2.2 of Standard No. 109, require passenger car tires to have a maximum inflation pressure of either 32, 36, 40, or 60 psi (pounds per square inch), or 240, 280, 300, or 340 kPa (kiloPascals). These maximum inflation pressures are incorporated in Table I-C "Radial Ply Tires" and Table II, "Test Inflation Pressures" both of which are in Appendix A. In addition, Figure 1 specifies wheel sizes for tires in relation to the tubeless tire bead unseating resistance tests set forth in section S5.2.1. The Uniform Tire Quality Grading Standards ("UTQGS" at 49 CFR 575.104) set forth similar requirements for maximum permissible inflation pressures for the testing procedures in Table 1, Table 2, and Table 2A.

A new pneumatic passenger car tire must comply with the requirements for bead unseating, tire strength, tire endurance, and high speed endurance at a test pressure determined by the maximum permissible inflation pressures specified in Standard 109. The practical reason for requiring each tire to be given one of a limited number of maximum inflation pressures (or wheel sizes, in the case of the bead unseating test) is to facilitate compliance testing.

Petition

On March 8, 1989, Continental AG, Daimler-Benz, and General Tire Inc. submitted a petition for rulemaking to amend Standard No. 109 and the UTQGS to include four new maximum inflation pressures, 290, 330, 350, and 390 kPa. Each of these inflation pressures is 50 kPa (7.25 psi) greater than the currently specified pressures of 240, 280, 300, and 340 kPa. In the petition and in a February 23, 1989 meeting with NHTSA personnel, the petitioners stated that these amendments were necessary to permit the use of a CT tire, which is a new tire and rim concept designed to have the rim flanges pointed radially inward and the tire to fit on the underside of the rim in a manner that encloses the rim flanges inside the air cavity of the tire. The petitioners stated that the European Tyre and Rim Technical Organization (ETRTO) and the Tire and Rim Association (TRA) have adopted the term "CT" to identify this tire design. The petitioners explained that at equal inflation pressures, the CT tire will exhibit greater sidewall deflection than a conventional radial tire. This disparity disappears when the CT tire is inflated by 50 kPa above the pressure in the conventional radial tire.

The petitioners further stated that amending Standard No. 109 to permit the CT tire would result in an increased level of safety compared to conventional radial tires in cases of flats, gradual air loss resulting in significant under-inflation, or sudden air loss resulting in blowouts. According to the petitioners, a CT tire that experiences a flat still may be driven safely at normal highway speeds for up to 200 miles, in contrast to a conventional tire. As a result, a driver could travel to a service station instead of being forced to change the flat tire in a potentially dangerous or inconvenient setting such as a tunnel, a deserted highway, or city traffic. The petitioners also noted that in contrast to a conventional tire, an under-inflated CT tire or one that experiences a sudden air loss in a blowout or as the result of a puncture would not result in any appreciable loss of control because the tire would not leave the rim.

The petitioners stated that amending the standard to permit the CT tire would also result in incidental benefits. According to the petition, the CT tire would allow a vehicle designer more room for larger brake, suspension, and anti-lock brake system; its design would result in shorter stopping distances, greater resistance to both longitudinal and lateral hydroplaning, and better distribution of the tire footprint pressure; its run-flat would result in potential fuel savings by reducing the overall vehicle weight by eliminating the need for a spare tire and tire jack; and the CT tire's lower internal friction and corresponding decreased rolling resistance would also contribute to lower fuel consumption.

The petitioners submitted test and other data related to the performance of the CT tire indicating that the tire, when properly inflated, would comply with Standard No. 109's performance requirements. The petitioner further stated that it had undertaken extensive developmental testing and analysis of the CT tire while in its deflated stage. These tests focused on determining if the tire would leave the rim or come apart when driven through various maneuvers.

NHTSA addressed other petitions raising similar issues in amending Standard No. 109 to include additional maximum inflation pressures related to pneumatic tires on passenger cars. For instance, in response to a petition from ETRTO to permit reinforced tires

requiring a higher inflation pressure than allowed at the time, a May 19, 1988 final rule amended Standard No. 109 to add a new maximum permissible inflation pressure of 340 psi. (53 FR 17950, see also 53 FR 936, January 14, 1988.)

The 1988 amendment relied on a 1978 rulemaking that justified allowing the P-type temporary tire, which also needed a higher inflation pressure. The 1978 rulemaking added the 300 kPa maximum inflation pressure to the standard in response to a petition by Goodyear Tire and Rubber Company (Goodyear) and the Rubber Manufacturers Association (RMA). (43 FR 8570, March 2, 1978; 43 FR 24310, June 5, 1978.) In both the 1978 and 1988 rulemaking, the agency determined that amending the standard's specifications for the maximum permissible inflation pressure was necessary to permit a new tire technology to carry a load comparable to tires already in compliance with the standard. The agency notes that Continental's CT tire presents an analogous situation.

On June 9, 1989, NHTSA sent a letter to Continental Tire granting its petition for rulemaking. In addition, on July 3, 1989, a NHTSA representative met with Continental Tire to obtain further information about CT tires.

Agency's Proposal

After reviewing Continental's petition, the CT tire concept, and previous agency rulemakings allowing additional inflation pressures in Standard No. 109, NHTSA tentatively concludes that the CT tire and rim concept has the potential for increased safety, especially in the deflated condition. The agency also tentatively concludes that allowing the CT tire may result in incidental benefits such as increased fuel efficiency. NHTSA accordingly has decided to issue this notice proposing to amend Standard No. 109 to permit tires with inflation pressures of 290, 330, 350, or 390 kPa. Conforming amendments would be made throughout the standard so that test criteria suitable for these new pressures would be established for the required performance tests. Similarly, where necessary, conforming amendments would be made in the Uniform Tire Quality Grading Standards (49 CFR 575.104) related to the treadwear testing of passenger car tires.

NHTSA emphasizes that even though it has tentatively determined that the CT tire has the potential to improve safety, the agency wants to ensure that there are no attributes of CT type construction that could degrade safety. Accordingly, the agency invites comments about all aspects of CT-type performance.

The notice proposes to include a definition of "CT" tire in section S3. The agency notes that this would be consistent with the current standard which defines different pneumatic tire designs such as bias ply and radial ply tires. The proposal adopts the definition suggested by the petitioners with some minor modifications to make it consistent with the existing definitions.

The notice proposes to amend the standard to specify that in addition to the currently permitted maximum inflation pressures, the inflation pressure may be 290, 330, 350, or 390 kPa. Conforming amendments related to this proposal would be made throughout Standard No. 109 and the UTQGS. This would allow the agency to conduct compliance testing for UTQGS of CT tires with the higher inflation pressures. In addition, § 575.104(e)(2)(i), which currently requires tire with "identical" size designations, would be revised to permit tires with "identical or equivalent" size designations. Given that the term "equivalent" means "equal in value," the agency believes that this proposed modification would permit comparable tires to be graded without having any significant adverse impact on treadwear grading.

NHTSA considered requiring additional testing for the CT tires in the deflated condition. The agency was concerned with whether the performance requirements currently specified in Standard No. 109 would be adequate to address all characteristics that may affect the safety of the CT tire, or whether modifications of existing requirements or additional requirements were needed to ensure the same level of safety as conventional pneumatic tires. The agency has tentatively decided not to propose requirements related to additional factors in the belief that the existing requirements would be adequate to ensure the tire's safety. The agency notes that the amendments are necessary because the dimensions and pressures in the Standard do not include those apparently best suited for the CT tire. The agency welcomes comments about its tentative decision to rely on the existing tests and to require no tests beyond those currently required by Standard No. 109.

Regulatory Impacts

The proposed amendments would become effective 30 days after publication of a final rule in the **Federal Register**. NHTSA believes that there is a good cause for an effective date within that time period since the amendments would relieve a restriction and permit the sale of tires which may provide better performance without any negative impact on safety.

The agency has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The amendments would not impose new requirements for current tires but instead would permit a new category of tire. Since selection of this option is a discretionary decision made by either the vehicle manufacturer or purchaser and not a mandatory safety requirement, a Regulatory Evaluation is not required.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effect of this action on small entities. I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. The agency believes that few, if any, tire manufacturers would qualify as small businesses. Any tire manufacturers that do qualify as small businesses might benefit to a small extent by being permitted to produce this new type of tire. Small businesses, small organizations, and small governmental units would be affected by the proposed amendment only to the effect that they purchase motor vehicles. These small entities could benefit to a small extent if they purchase vehicles with these new tires.

NHTSA has analyzed this action under the principles and criteria of Executive Order 12612, and has determined that this proposal would not have sufficient Federalism implications to warrant preparing a Federalism Assessment.

Finally the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act and determined that the proposed rule would not have any significant impact on the human environment.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. The limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentially, three copies of the

complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Parts 571 and 575

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR parts 571 and 575 would be amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50

§ 571.109 [Amended]

2. Section S3 would be amended by adding the following definition after the definition for "Cracking":

* * * * *

"CT" means a pneumatic tire with an inverted flange tire and rim system in which the rim is designed with rim flanges pointed radially inward and the tire is designed to fit on the underside of the rim in a manner that encloses the rim flanges inside the air cavity of the tire.

* * * * *

§ 571.109 [Amended]

3. Section S4.2.1(b) would be revised to read as follows:

* * * * *

(b) Its maximum permissible inflation pressure shall be either 32, 36, 40, or 60 psi, or 240, 280, 290, 300, 340 kPa. For a CT tire the maximum permissible inflation pressure shall be either 290, 330, 350, or 390 ka.

* * * * *

§ 571.109 [Amended]

4. S4.2.2.2(2) would be revised to read as follows:

* * * * *

(2) (For tires with a maximum permissible inflation pressure of 60 psi, or 240, 280, 290, 300, 330, 340, 350, or 390 kPa) 7 percent or 0.4 inch, whichever is larger.

* * * * *

§ 571.109 [Amended]

5. Section S4.3.4 would be revised to read as follows:

S4.3.4 If the maximum inflation pressure pressure of a tire is 240, 280, 290, 300, 330, 340, 350, or 390 kPa, then:

(a) Each marking of that inflation pressure pursuant to S4.3(b) shall be followed in parenthesis by the equivalent inflation pressure in psi, rounded to the next higher whole number; and

(b) Each marking of the tire's maximum load rating pursuant to S4.3(c) in kilogams shall be followed in parenthesis by the equivalent load rating in pounds, rounded to the nearest whole number.

* * * * *

6. The table of wheel sizes and test fixture dimensions in Figure 1 would be revised, appearing a follows:

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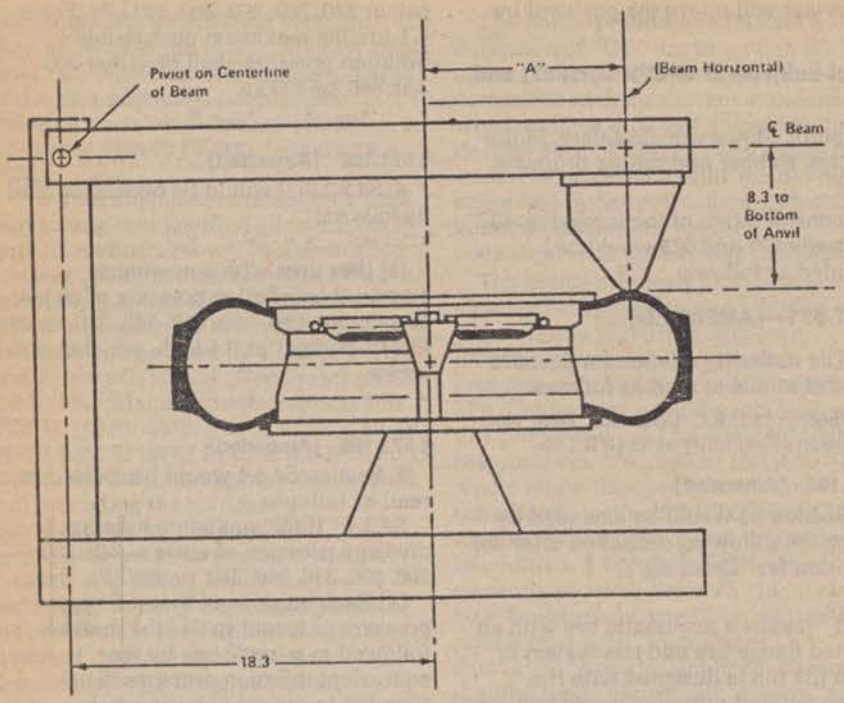

Wheel Size	*Dimension "A" for tires with maximun inflation pressure*	
	Other than 60 lbs/in²	*60 lbs/in²*
17	12.00	.....
16	11.50	9.9
15	11.00	9.4
14	10.50	8.9
13	10.00	8.4
12	9.50	.....
11	9.00	.....
10	8.50	.....
320	8.50	.....
340	9.00	.....
345	9.25	.....
365	9.75	.....
370	10.00	.....
390	11.00	.....
415	11.50	.....
400 (1)	10.25	.....
425 (1)	10.75	.....
450 (1)	11.25	.....
475 (1)	11.75	.....
500 (1)	12.25	.....

(1) for CT tires only

Figure 1—Bead Unseating Fixture—Dimensions in Inches

BILLING CODE 4910-59-C

7. Tables I–C of Appendix A would be revised, appearing as follows:

TABLE I–C.—FOR RADIAL PLY TIRES

Size Designation	Maximum permissible inflation										
	32 lbs/in²	36 lbs/in²	40 lbs/in²	240 kPa	280 kPa	300 kPa	340 kPa	(1) 290 kPa	(1) 330 kPa	(1) 350 kPa	(1) 390 kPa
Below 160 mm (in-lbs)	1,950	2,925	3,900	1,950	3,900	1,950	3,900	1,950	3,900	1,950	3,900
160 mm or above (in-lbs)	2,600	3,900	5,200	2,600	5,200	2,600	5,200	2,600	5,200	2,600	5,200

(1) For CT tires only.

8. Table II of Appendix A would be revised, appearing as follows:

TABLE II.—TEST INFLATION PRESSURES

Test Type	Maximum permissible inflation pressure to be used for the following test:											
	lbs/in²				*kPa*				*kPa (1)*			
	32	*36*	*40*	*60*	*240*	*280*	*300*	*340*	*290*	*330*	*350*	*390*
Physical dimensions, bead unseating, tire strength, and tire endurance	24	28	32	52	180	220	180	220	230	270	230	270
High speed performance	30	34	38	58	220	260	220	360	270	310	270	310

(1) For CT tires only.

PART 575—[AMENDED]

9. The authority citation for part 575 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407, 1421, and 1423; delegation of authority at 49 CFR 1.50

§ 575.104 [Amended]

10. Section 575.104(e)(2)(i) would be revised to read as follows:

* * * * *

(e) * * *

(2) *Treadwear grading procedure.* (i) Equip a convoy with course monitoring and candidate tires of the same construction type. Place four course monitoring tires on one vehicle. On each other vehicle, place four candidate tires with identical or equivalent size designations. On each axle, place tires that are identical with respect to manufacturer and line.

* * * * *

§ 575.104 [Amended]

1. A new sentence is added to § 575.104(f)(2)(viii) immediately after the first sentence. The first sentence is being republished for the convenience of the reader.

* * * * *

(f) * * *

(2) * * *

(viii) Prepare two candidate tires of the same construction type, manufacturer, line, and size designation in accordance with paragraph (f)(2)(i) of this section, mount them on the test apparatus, and test one of them according to the procedures of paragraph (f)(2 (ii) through (v) of this section, except load each tire to 85 percent of the test load specified in § 575.104(h). For CT tires the test inflation of candidate tires shall be 230 kPa. * * *

* * * * *

12. Table I of Part 575 would be revised, appearing as follows:

TABLE 1.—TEST INFLATION PRESSURE

Test Type	Maximum permissible inflation pressure for the following test:											
	lbs/in²				kPa				kPa (1)			
	32	36	40	60	240	280	300	340	290	330	350	390
Treadwear test and in determination of tire load for temperature resistance testing	24	28	32	52	180	220	180	220	230	270	230	270
All aspects of temperature resistance testing other than determination of tire load	30	34	38	58	220	260	220	260	270	310	270	310

(1) For CT tires only.

13. Table II of Part 575 would be revised, appearing as follows:

TABLE 2 [1]

Maximum Inflation Presure	Multiplier to be used for treadwear testing	Mulliplier to be used for traction testing
32 lbs/in²	.851	.851
36 lbs/in²	.870	.797
40 lbs/in²	.883	.753
240 kPa	.866	.866
280 kPa	.887	.804
300 kPa	.866	.866
290 kPa (1)	8.86	.866
330 kPa (1)	.887	.804
350 kPa (1)	.866	.866
390 kPa (1)	.887	.804

(1) For CT tires only.

[1] Prior to July 1, 1984, the multipliers in the above table are not to be used in determining loads for the tire size designations listed below in Table 2A. For those designations, the load specifications in that table shall be used in UTQG testing during that period. These loads are the actual loads at which testing shall be conducted and should not be multiplied by the 85 percent factors specified for treadwear and traction testing.

Issued on: February 7, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-3229 Filed 2-13-90; 8:45 am]

BILLING CODE 4910-59-m

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 90493-0038]

RIN 0648-AC15

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement previously disapproved portions of Amendment 3 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). This proposed rule would (1) prohibit the use in the exclusive economic zone (EEZ) of drift gillnets for Atlantic migratory group king mackerel and for all other coastal migratory pelagic fish from the Virginia/North Carolina border to the U.S./Mexico border (a prohibition on the use in the EEZ of drift gillnets is already in effect for Gulf and Atlantic migratory groups of Spanish mackerel and Gulf migratory group king mackerel); and (2) authorize the Secretary to prohibit the use of purse seines and run-around gillnets for Atlantic migratory group king mackerel when, in the opinion of the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), that group is determined to be overfished and, the commercial allocation can be harvested by authorized gear other than purse seines and run-around gillnets. The intended effects of this proposed rule are to prevent waste; prevent the problems associated with excessive amounts of passively fished gear for long soak periods; prevent problems with lost gear and gear that contacts irregular low reef-type bottoms; prevent localized overfishing; and prevent the adverse impacts associated with early closures of the commercial fisheries on the users of traditional hook and line gear, such closures being the likely result of allowing the use of purse seines, run-around gillnets, and drift gillnets in the commercial fisheries.

DATES: Written comments must be received on or before March 1, 1990.

ADDRESSES: Comments may be sent to, and copies of Amendment 3, which includes the draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis may be obtained from, Mark F. Godcharles, Southeast Region, NMFS, 9450 Koger Boulevard, St. Pertersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the FMP, prepared by the Gulf of Mexico and South Atlantic Councils, and its implementing regulations at 50 CFR Part 642, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*

The Councils find that drift gillnets (1) are an indiscriminate harvester of fish, producing (a) a substantial wasted bycatch of unregulated species, e.g., sharks, bonito, and jacks, and (b) a waste of regulated species, e.g., undersized cobia and sailfish; (2) are deployed in excessive lengths and passively fished for long soak periods accentuating all ascribed problems; (3) foster ghost net fishing when lost; (4) inflict likely habitat damage when encountering reef type sea bottoms; (5) produce an inferior quality fish product compared to the hook-and-line product; and (6) promote localized overfishing and thereby intensify regional conflicts with traditional hook-and-line fishermen, both recreational and commercial, when intensively deployed in the area south of Cape Canaveral, FL. Excessive fishing mortality in one area depletes the local stock without necessarily leading to recruitment overfishing. To promote stock stability and fair and equitable allocation of the resource, the Councils, by resubmitting Amendment 3, propose the prohibition of drift gillnets for all coastal migratory fisheries, thus spreading fishing mortality throughout the management area and fishing year.

In addition, the Councils are concerned about the status of the Atlantic migratory group king mackerel resource which they consider to be fully utilized. Based on the high fishing mortality indicated in the 1988 mackerel stock assessment, the Councils concluded that the resource was overfished. The 1989 assessment concluded that the resource was not overfished, but that fishing mortality should be constrained to preserve new recruitment classes and their subsequent contribution to the spawning stock biomass. Because of the negative socioeconomic impacts on traditional users that would accompany overfished status or full utilization of the commercial allocation, the Councils propose immediate prohibition of drift gillnets in the Atlantic migratory group king mackerel fishery, rather than waiting for the resource once again to be declared overfished.

For similar reasons the Councils concluded that purse seines and run-around gillnets should be prohibited from the fishery when the Atlantic group king mackerel fishery is declared overfished and, in the opinion of the Councils, the commercial quota can be harvested by existing gear other than purse seines and run-around gillnets. Although purse seines and run-around gillnets are not frequently used in this fishery, when the fishery is declared overfished their use will contribute to early closure of the commercial fishery and the accompanying negative socioeconomic impact to traditional hook-and-line users.

Amendment 3 was originally submitted to the Secretary of Commerce (Secretary) in March 1989, and its availability was published in the **Federal Register** on March 17, 1989 (54 FR 11252). The proposed rule to implement Amendment 3 was published in the **Federal Register** on April 10, 1989 (54 FR 14256). The Secretary approved portions of Amendment 3 on June 16, 1989, but did not approve (1) the drift gillnet prohibition for all coastal migratory pelagic species, (2) the purse seine and run-around gillnet

prohibitions for Atlantic migratory group king mackerel, and (3) the proposed new FMP objective to minimize waste and bycatch in the fishery (July 13, 1989, 54 FR 29561). The Councils discussed the disapproved measures during meetings in June, August/September, and November/December, considered additional public input at those meetings and voted to resubmit the disapproved measures for approval by the Secretary. These measures, their impacts and the rationale for the Councils' conclusions are summarized below. A more complete analysis appears in the resubmission document, the availability of which was announced in the **Federal Register** (January 22, 1990, 55 FR 2118).

Background

1988 Assessment and Actions

According to the 1988 mackerel stock assessment, the status of Atlantic migratory group king mackerel was as follows: (1) Spawning stock biomass remained relatively constant until 1984, after which a decrease may have occurred; (2) fishing mortality rates appeared to be at or slightly above rates of full exploitation; (3) catches were high and variable from 1980 to 1985, but catches in 1986 and 1987 declined; and (4) four of five data sets of catch per unit of effort indicated declines in abundance. These results led the Councils to conclude that the Atlantic migratory group of king mackerel was overfished in 1988.

Based on the 1988 assessment, the Councils reduced total allowable catch (TAC) for the 1988/89 fishing season from 9.68 to 7.0 million pounds (28 percent reduction). This reduction was based on the Councils' concern for the apparent declining stocks and their decision to be conservative rather than risk continued overfishing. The resulting commercial allocation was reduced from 3.59 to 2.6 million pounds. This allocation was reached in November 1988; however, because of a court order, the commercial fishery was not closed immediately. The Councils concluded that the use of drift gillnets, purse seines, and run-around gillnets contributed to the early attainment of the commercial allocation.

1989 Assessment and Actions

The 1989 stock assessment found the status of Atlantic migratory group king mackerel as follows:

(1) Catches have remained relatively stable since 1981. Catch estimates for 1979 and 1980 should be given less emphasis due to initial estimation procedures in the Marine Recreational Fishing Statistical Survey. Total catch varied between 9.4 and 7.2 million pounds during the period 1981 through 1987. Catches for 1988 (through October) were 7.9 million pounds.

(2) The abundance of spawning-age fish increased during the early to mid-1980s and may have declined slightly in recent years. There appears to be an adequate spawning biomass present which should continue, as long as fishing mortality rates do not increase greatly. Very high fishing mortality rates over the next several years could prevent the abundance of young fish from reaching the spawning stock.

(3) There appears to be significant amounts of recruitment into the fishery; but very high fishing mortality rates over the next several years could reduce the size of these year classes.

(4) Current projections produce unreasonably high estimates of acceptable biological catch (ABC) due to inability to quantify the magnitude of recent increases in recruitment. Estimates exceeded the approximated maximum sustainable yield (MSY) range of 6.9 to 15.4 million pounds for the Atlantic migratory group and, towards the upper end, exceeded the MSY range of 21.9 to 35.2 million pounds for the entire king mackerel stock. The stock assessment panel recommended that ABC for the 1989–90 fishing year be set between 6.9 and 15.4 million pounds, which approximates the MSY range. If this regulatory strategy is maintained, then spawning biomass should remain at adequate levels.

(5) As estimated during the assessment, the Atlantic migratory group of king mackerel is not overfished because the current fishing mortality rate does not exceed $F_{0.1}$ and the spawning stock biomass does not appear to be low enough to affect recruitment.

Based on the 1989 assessment, the Councils increased TAC from 7.0 to 9.0 million pounds. The resulting commercial allocation was increased from 2.6 to 3.34 million pounds. This commercial allocation exceeds historical catches in the 1982/83 and 1987/88 fishing years. The 1982/83 fishing year was before significant catches by drift gillnet gear and therefore indicates the potential for traditional commercial gear to attain the full commercial allocation.

The Councils recognize that the 1982/83 fishing year was prior to substantive management measures being in place (e.g., bag limits, permit requirements, etc.) and that more fish were available and harvest levels were the highest in the 1979–1989 period. However, the Councils are of the opinion that, with sufficient king mackerel available, the commercial hook-and-line fishery would expand in traditional fishing areas and take the available yield. It is recognized this may take one or two years and during that period the commercial allocation may or may not be taken. Leaving fish unharvested from the allocation to spawn would not pose a significant problem in the Councils' opinion. Further, an expanding commercial catch in North Carolina, the increasing number of commercial hook and line fishermen, the increasing number of tournaments, the increasing number of recreational fishermen, and the potential for increased numbers of trips by both recreational and commercial fishermen are factors that will increase total catches.

Allowing drift gillnet gear in any of the coastal migratory pelagic fisheries will likely produce catches and/or result in mortality of overfished Gulf group king mackerel and Atlantic and Gulf group Spanish mackerel. The Councils are concerned that they cannot adequately protect king and Spanish mackerel resources or optimize yields if they are allowed to be targeted, taken as a bycatch, or inadvertently killed in driftnet fisheries for other coastal pelagic species. Also, in years when Atlantic group king mackerel are overfished and total allowable catch is set low to protect the resource, drift gillnets would likely produce a king mackerel catch and/or bycatch that would contribute to early closure of the commercial king mackerel fisheries, thus negatively impacting traditional hook-and-line commercial participants and resulting in further regional allocation problems.

The 1988 and 1989 assessments demonstrate that the status of Atlantic migratory group king mackerel, though not considered overfished at present, is tenuous, and conservative management should be employed until a clear picture of the long term outlook for the resource is determined.

The Councils are concerned that the previously approved actions in Amendment 3 do not prevent the inadvertent mortality of overfished king and Spanish mackerel but merely require that they not be targeted or retained; this further contributes to the waste and bycatch problem. The Councils concluded that this could negatively impact the rebuilding process already in place for overfished groups of king and Spanish mackerel.

Issue 1. Drift Gillnets in the Coastal Migratory Pelagic Fishery

The approved measures in Amendment 3 prohibited drift gillnets in

fisheries for Atlantic and Gulf migratory groups of Spanish mackerel and for Gulf migratory group king mackerel. Currently, there is no directed drift gillnet fishing for cobia, cero mackerel, little tunny, dolphin, or bluefish. Because drift gillnets are an indiscriminate gear, they cannot fish exclusively for any of these coastal pelagic species without a bycatch of king and Spanish mackerel. In addition, prohibiting the retention of coastal migratory pelagic fish in other drift gillnet fisheries will facilitate enforcement of the existing drift gillnet prohibitions. The shark drift gillnet fishery is the only fishery of which the Councils are aware that will be impacted by the prohibition on retention of all coastal migratory pelagic resources. The Councils do not have sufficient information about this fishery to evaluate the level of impact.

Impacts on Commercial Hook and Line Fisheries

Based on drift gillnet catches in 1987, a prohibition on use of drift gillnets would potentially make an additional 765,226 pounds of king mackerel available for harvest by the traditional commercial hook-and-line fisheries. How this additional catch would be distributed geographically is unknown, but in all probability catches in the area of Ft. Pierce, FL, and southward would increase due to increased local availability. Also, highly valued recreational species taken incidentally to the mackerel drift gillnet fishery would become available to the recreational fishery. The addition of 765,226 pounds of king mackerel, if caught entirely by the commercial hook and line fishery, would produce revenues of $1,078,969.

Impacts on the Drift Gillnet Fishery

Data for 1987, 1988, and preliminary data for 1989, indicate that 13 vessels and between 39 and 52 fishermen were engaged in the drift gillnet fishery for Atlantic migratory group king mackerel. These vessels and fishermen also fish (1) in the run-around gillnet fishery for Gulf migratory group king mackerel and Gulf and Atlantic migratory group Spanish mackerel and (2) in the shark drift gillnet fishery. Periodically they also fish with smaller gillnet boats (outboards) in Indian River, FL, and outside the inlets. As of September 1987, there were approximately 38,000 yards of drift gillnet in the fishery valued between $194,000 and $232,800 when new. Based on drift gillnet catches in 1987, prohibiting this gear for coastal migratory pelagic species would result in foregone catches of king mackerel of 765,226 pounds. The revenue produced by this catch is estimated at $925,923. The range of losses to the individual drift gillnet vessels would be from 3,968 to 122,987 pounds with revenues from $4,801 to $148,814. In addition, losses from other species that are landed and sold would total approximately 65,755 pounds with estimated revenue of $65,755 for the fishery as a whole. Loss in value of gillnets is unknown because of uncertainties as to age and the amount that could not be used in other fisheries.

The Councils selected the option of total prohibition of drift gillnets for all coastal migratory pelagic because they concluded that:

(1) It most appropriately meets the objectives of the FMP, is least burdensome, and has the greatest likelihood of correcting the problems discussed earlier.

(2) When the quantified and non-quantified benefits are combined, a net benefit to society results.

(3) It is in agreement with Florida's regulations, thereby aiding enforcement.

Issue 2. Purse Seines in the Atlantic Migratory Group King Mackerel Fishery

Current regulations prohibit the use of purse seines for Gulf group king mackerel and Atlantic and Gulf groups of Spanish mackerel because they are overfished and the existing commercial allocations are fully utilized by historical commercial gear types. For these species/migratory groups, the users of historical gear have had seasonal closures. Commercial allocations for the Atlantic migratory group of king mackerel had not been filled in the past, though the harvest was approaching TAC. During the 1988/89 fishing season, however, the commercial allocation was reached and the fishery was to be closed on November 23, 1988, but remained open until February 23, 1989 by court order. In addition, the Councils are concerned there may be a shift of effort into the Atlantic migratory group as fishermen are restricted from fishing other groups of mackerel.

The Councils concluded that the use of purse seines for mackerels should be discontinued on Atlantic migratory group king mackerel, when declared overfished and, in the opinion of the Councils, the commercial quota can be harvested by existing gear other than purse seines and run-around gillnets, because:

(1) The use of purse seines under such circumstances would worsen the overfished status.

(2) It would be imprudent and unfair to allow a newer user group into an overfished fishery when existing, historic users are forced to limit catches because of reduced allocations. As stocks recover and traditional commercial fishermen are not taking their allocation, this issue would be reconsidered.

(3) Purse seine boats are not historic participants in the mackerel fishery, not having been used until introduced in Federal waters in 1983 for study purposes. The mackerel fishery appears to be only an opportunistic fishery for purse seines with mackerel being taken in 48 of the 305 purse seine trips (16 percent) during the study.

(4) The Councils would be allocating the resource fairly, based on traditional use, to the greatest number of fishermen.

(5) All states prohibit the use of purse seines for mackerel in adjacent state waters.

(6) The marginal value of a fish allocated to the traditional commercial fishery is higher than that of a fish allocated to the purse seine fishery.

The number of purse seine vessels that participated in the Atlantic migratory group king mackerel fishery for the first time in April 1988 was very small. The number of vessels was so small that purse seine catches had to be combined with run-around gillnet catches to avoid disclosure of confidential data. Using the combined purse seine and run-around gillnet catches in 1988, the prohibition would impact fishermen by preventing the harvest of approximately 340,000 pounds of king mackerel.

Issue 3. Run-around Gillnets in the Atlantic Migratory Group King Mackerel Fishery

Run-around gillnets have been used sporadically to harvest Atlantic migratory group king mackerel. The only recent catches were taken during April 1988. The Councils reviewed available information and chose to prohibit run-around gillnets for taking Atlantic migratory group king mackerel, when declared overfished and, in the opinion of the Councils, the commercial quota can be harvested by existing gear other than purse seines and run-around gillnets. They reasoned that continuing the use of run-around gillnets will likely result in early closure of the commercial fishery, thereby negatively impacting traditional commercial hook-and-line participants. Further, run-around gillnet gear is not considered a traditional gear in the Atlantic migratory group king mackerel fishery. This prohibition is not being applied to Atlantic or Gulf migratory group Spanish mackerel or Gulf migratory group king mackerel because run-around gillnets are

considered traditional gear in those fisheries.

A small number of run-around gillnet vessels participated in the Atlantic migratory group king mackerel fishery for the first time in April 1988. The number of vessels was so small that run-around gillnet catches had to be combined with purse seine catches to avoid disclosure of confidential data. Using the combined run-around gillnet and purse seine catches, the prohibition would impact fishermen by preventing the harvest of approximately 340,000 pounds of king mackerel.

Pursuant to section 304(b)(3)(B)(iii) of the Magnuson Act, the proposed rule prepared by the Councils has been revised by NMFS to authorize, rather than require, the Secretary to prohibit purse seines and run-around gillnets in the Atlantic Migratory group king mackerel fishery to assure consistency with the respective functions of the Secretary and the Councils under the Magnuson Act.

In addition to the above issues, the resubmission action subject to Secretarial approval, also would add an objective to the FMP to minimize waste and bycatch in the fishery.

Classification

Section 304(b)(3)(B)(iii) of the Magnuson Act, as amended by Pub. L. 99-659, requires the Secretary of Commerce (Secretary), after a Council has resubmitted a partially disapproved amendment to a FMP, to review immediately the revised proposed regulations, make such changes to them as may be necessary, and thereafter publish such revised proposed regulations in the **Federal Register**. At this time, the Secretary has not determined that the resubmitted Amendment 3, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Councils prepared a regulatory impact review (RIR) which concludes that this rule will have the economic effects discussed above in the analysis of the management measures of the resubmitted Amendment 3. A copy of the RIR may be obtained at the address listed above.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Councils prepared an initial regulatory flexibility analysis (IRFA) as part of the regulatory impact review which concludes that this proposed rule, if adopted, would have significant effects on small entities. An estimated thirteen vessels (small entities) would be prohibited from using drift gillnets to take any coastal migratory pelagic fish. Operators of these vessels would have limited opportunities to use this gear in other fisheries. Income based on use of this gear would be lost. In addition, a small but unknown number of vessels (small entities) could be prohibited from using purse seines and run-around gillnets to take Atlantic group king mackerel. These gears have been used in other fisheries but were first actively used in the Atlantic group king mackerel fishery during the 1987/88 fishing year. Operators of vessels with purse seines and run-around gillnets have alternate fisheries in which to use this gear. A copy of the IRFA may be obtained at the address above.

The Councils determined that the initial proposed rule for Amendment 3 would be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of North Carolina, South Carolina, Florida, Alabama, Mississippi, and Louisiana. Georgia and Texas do not have approved coastal zone management programs. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. North Carolina, South Carolina, Florida, and Louisiana agreed with this determination. Alabama and Mississippi did not respond within the statutory time period and, therefore, consistency is implied automatically. All measures proposed in this rule were encompassed within Amendment 3 as originally submitted. Therefore, the Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) finds that the determination of consistency remains applicable.

The Councils prepared an environmental assessment (EA) that discusses the impact on the environment of Amendment 3. A copy of the EA may be obtained at the address listed above.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 9, 1990.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 642.7, paragraph (x) is revised to read as follows:

§ 642.7 Prohibitions.

* * * * *

(x) Fish with a drift gillnet for coastal migratory pelagic fish or possess any such fish aboard a vessel with a drift gillnet aboard, as specified in § 642.24(a)(3).

3. In § 642.24, paragraph (a)(3) is revised to read as follows:

§642.24 Vessel, gear, equipment limitations.

(a) * *

(3) *Drift gillnets.* The use of a drift gillnet to fish in the EEZ for coastal migratory pelagic fish is prohibited. A vessel in the EEZ or having fished in the EEZ with a drift gillnet aboard may not possess any coastal migratory pelagic fish.

* * * * *

4. In § 642.27, a new paragraph (f)(4) is added to read as follows:

§ 642.27 Stock assessment procedures.

* * * * *

(f) * * *

(4) Prohibiting the use of purse seines and run-around gillnets for Atlantic migratory group king mackerel. Such

prohibition may be implemented only when the Councils have found:

(i) That the Atlantic migratory group of king mackerel is in an overfished status, based on a conclusion of the Group and verified by the Councils' Scientific and Statistical Committees; and

(ii) That the commercial allocation of Atlantic migratory group king mackerel can be harvested by authorized gear other than purse seines and run-around gillnets.

[FR Doc. 90-3514 Filed 2-9-90; 3:32 pm]

BILLING CODE 3510-22-M

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50 CFR Part 658

RIN 0648-AC75

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NOAA issues this notice that the Gulf of Mexico Fishery Management Council (Council) has resubmitted a previously disapproved proposal contained in Amendment 4 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) for review by the Secretary of Commerce (Secretary). Comments are invited from the public on the amendment and related documents.

DATE: Comments will be accepted until March 14, 1990.

ADDRESSES: Copies of the resubmitted portion of Amendment 4, the environmental assessment, and supplemental regulatory impact review are available from the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609.

Send comments to Michael E. Justen, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The resubmitted portion of Amendment 4 was prepared under the Magnuson Fishery Conservation and Management Act which requires the Secretary, upon receiving an FMP or amendment, to publish a notice that the FMP or amendment is available for public review and comment. The Secretary will consider the public comments in determining the approvability of this amendment.

NOAA partially disapproved Amendment 4 on December 13, 1988 (53 FR 49992). The disapproved portion of Amendment 4 proposes to apply the minimum-size landing and possession limits of the state where landed to white shrimp taken in the exclusive economic zone (EEZ). NOAA disapproved this measure because (1) it was not justified by adequate economic rationale; (2) the use of size counts as a management tool for shrimp is inconsistent with the FMP; and (3) the measure included an open-ended deferral to changes in state count laws for white shrimp that would not be reviewable for conformance with the FMP prior to becoming applicable to white shrimp harvested from the EEZ.

The Council has revised the measure and provided additional information in an attempt to satisfy NOAA's objections to the original proposal. Proposed regulations for this measure are scheduled to be published within 10 days.

Authority: 18 U.S.C. 1801 *et seq.*

Dated: February 9, 1990.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-3515 Filed 2-9-90; 3:32 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 55, No. 31
Wednesday, February 14, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Development of Laguna Mountain Civilian Conservation Center

AGENCY: Forest Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the USDA Forest Service will prepare an Environmental Impact Statement for the proposed Laguna Mountain Civilian Conservation Center located at the former Air Force Base, Laguna Mountain plateau on the Descanso Ranger District, Cleveland National Forest, San Diego, California. The Forest Service invites written comments on this proposal. A full environmental analysis will be conducted. We estimate that the Draft EIS will be published in September, 1990, and the Final EIS will be available for review in March, 1991.

DATES: Interested and affected individuals should send their written comments and suggestions by April 23, 1990.

ADDRESSES: Please submit written comments and suggestions regarding the Laguna Mountain Civilian Conservation Center to Michael J. Rogers, Forest Supervisor, Cleveland National Forest, 880 Front Street, room 5N14, San Diego, California 92188.

FOR FURTHER INFORMATION CONTACT: Sharon Busch, Civil Engineer, Cleveland National Forest, 332 Juniper Street, Escondido, California, telephone 619–743–7086.

SUPPLEMENTARY INFORMATION: The Cleveland National Forest Land and Resource Management Plan was completed in June, 1986. The management direction in the Plan incorporated the Laguna Mountain Recreation Resource Plan (LMRRP). The LMRRP stated that, as available, the Air Force Base would be considered for uses such as human resources or environmental education programs and expanded administrative facilities.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives for this site. One of these alternatives will be no development of the site. Other alternatives will consider development designs with occupancy for approximately 320 people, retrofitting for sewage disposal and handicapped access.

Michael J. Rogers, Forest Supervisor, Cleveland National Forest, San Diego, California will be the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Forest Supervisor will hold the following public scoping meetings:

Mt. Laguna,
Al Bahr Shrine Camp, 1 PM to 3 PM, Saturday, March 17, 1990
Pine Valley,
Community Center, 7 PM to 9 PM, Tuesday, March 20, 1990
Julian,
Julian High School, 7 PM to 9 PM, Wednesday, March 21, 1990
San Diego,
Balboa Park, Cafe del Rey Moro, La Granada Room, 7 PM to 9 PM Thursday, March 22, 1990

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September, 1990. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register.**

The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency's Notice of Availability appears in the **Federal Register.** It is very important that those interested in the management of the Laguna Mountain plateau participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. NRDC, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period for the draft EIS ends, the comments received will be analyzed and considered by the Forest Service in the preparation of the Final Environmental Impact Statement. The final EIS is expected to be completed by March, 1991.

In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

Dated: February 8, 1990.
Michael J. Rogers,
Forest Supervisor.
[FR Doc. 90-3478 Filed 2-13-90; 8:45 am]
BILLING CODE 3410-11-M

The Winding Stair Tourism and Recreation Advisory Council

AGENCY: Forest Service, USDA.
ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Winding Stair Tourism and Recreation Advisory Council. The meeting will be open to the public. This notice also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act.

DATES: March 1, 1990, 7 p.m.

ADDRESSES: The meeting location is the High School Cafetorium at Heavener, Oklahoma. Send written statements to Forest Supervisor, Quachita National Forest, P.O. Box 1270, Hot Springs, AR 71902.

FOR FURTHER INFORMATION CONTACT: Robert LaVal, (501)-321-5317.

SUPPLEMENTARY INFORMATION: The Winding Stair Tourism and Recreation Advisory Council was created by the Winding Stair Mountain National Recreation and Wilderness Area Act (16 U.S.C. 460vv-13). The Council, comprised of 16 members, appointed by the Secretary of Agriculture, will meet periodically. The purpose of this Council is advisory in nature. The Act designates the Secretary to appoint a special advisory group from the local area in which the Ouachita National Forest is located to assist in the preparation of the tourism and recreation section of the Ouachita National Forest Land and Resource Management Plan amendment as required under subsections 15 (b) and (c). Subsection 15(b) provides for the promotion of tourism and recreation in ways consistent with the purposes for which the wilderness areas, the botanical areas, the National Recreation Area, the National Scenic and Wildlife Area, and the National Scenic Area are designated.

Glen Sullivan, Director of the Oklahoma Tourism and Recreation Department will chair the meeting. Representatives of the Forest Service will attend from the Department of Agriculture including the designated officers of the Federal Government. The agenda for this meeting will be to: continue with subcommittee reports from the following subcommittees: (1) Master Plan, (2) Lodge Feasibility, (3) Wilderness, (4) Physical Facilities, (5) Equestrian, (6) Signing, (7) Scenic Stops, (8) Hiking-trails-ORV, (9) Hang-gliding. Plans will be made for the next meeting and new business will be discussed.

Dated: February 7, 1990.
John M. Curran,
Forest Supervisor.
[FR Doc. 90-3509 Filed 2-13-90; 8:45 am]
BILLING CODE 3410-11-M

Seismic Exploration Permit Fees

AGENCY: Forest Service, USDA.
ACTION: Notice; revision of interim policy.

SUMMARY: The Forest Service gives notice that it is revising its standard land use rental fee applicable nationwide to seismic exploration premits (54 FR 45775, October 31, 1989). The fee of $50 per shot hole is being removed from the policy. All forms seismic exploration will have a fee of $200 per mile.

EFFECTIVE DATE: This policy is effective March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Ruben Williams, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (703) 235-2412.

SUPPLEMENTARY INFORMATION: The Forest Service, by notice in the **Federal Register** on October 31, 1989 (54 FR 45775), adopted an interim policy establishing a standard land use rental fee for seismic exploration on lands of the National Forest System of $200 per mile, or fraction of a mile, and $50 per shot hole. This policy was adopted upon determining that fee determination procedures then in place caused inconsistent application between regions of the Agency. It was also concluded that a uniform nationwide fee would increase agency efficiency in processing seismic permits by reducing the time and costs associated with the previous fee determination methods. The fee amount was adopted after consideration of private market transactions. However, the fee for the so-called shot-hole method of seismic exploration was incorporated as a carry-over from the previous method in the belief that this method was a separate and distinct form of exploration applicable to an individual site.

Comments received from the seismic exploration industry following publication of the October 31, 1989, notice indicate that the shot-hole method as described by the policy is rarely, if ever, used by the industry in current exploration techniques. Shot-holes, when used, are laid out in a linear pattern similar to that of other exploration techniques. As a result, the $50 per shot hole fee would result in a substantially higher fee that $200 per mile.

Since it was not the agency's internt to establish a higher fee for shot-hole exploration, the $50 fee per shot hole is being removed from the policy, and fees for all exploration methods in which temporary disturbance and occupancy of the land is authorized by a Forest Service permit will be at the rate of $200 per mile, or fraction of a mile. This fee does not apply to exploration by a holder of a valid Federal lease within a leashhold on National Forest System lands. Also, the seismic permit fee does not include any costs of reclamation, restoration, or compliance with applicable laws, such as identification and protection of cultural resources for which the holder may be responsible as a condition of the permit.

A revised interim directive to Forest Service Manual, Chapter 2720 is being issued to remove the $50 per shot-hole fee. The agency will evaluate the effect of a standard fee and the fee amount over the next 12 months to determine if any changes are needed before issuing permanent direction. Any member of the public, including seismic exploration contractors, may submit comments for the agency's consideration during the evaluation period. Notice of adoption of a final fee policy for seismic exploration will be given in the **Federal Register**

Dated: February 5, 1990.
George M. Leonard,
Associate Chief.
[FR Doc. 90-3460 Filed 2-13-90; 8:45 am]
BILLING CODE 3410-11-M

East Curlew Creek Area Timber Sales, Colville National Forest, Ferry County, WA

AGENCY: Forest Service, USDA.
ACTION: Notice intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to harvest and regenerate timber and to construct and reconstruct roads. The proposed projects will be in compliance with the Forest Land and Resource Management Plan which provides the overall guidance for management of this area

for the next ten years. The projects are proposed within portions of the North Fork Sanpoil River, Mires Creek, Lambert Creek, St. Peters Creek, Aeneas Creek, Long Alec Creek, and West Deer Creek drainages on the Republic Ranger District in fiscal years 1992 and 1993. The Colville National Forest invites written comments and suggestions on the scope of the analysis. The agency will give notice of the full environmental analysis and decision making process that will occur on the proposal so as to provide interested and affected people awareness as to how they may participate and contribute in the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by March 30, 1990.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Edward L. Schultz, Forest Supervisor, 695 South Main, Colville, WA 99114 or Patricia Egan, District Ranger, P.O. Box 468, Republic, WA 99166.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed project work and EIS should be directed to Jim Thinnes, Presale Forester, P.O. Box 468, Republic, WA 99166 (telephone: (509) 775–3147.

SUPPLEMENTARY INFORMATION: The proposal includes harvesting timber and constructing roads on two timber sales. This analysis will evaluate a range of alternatives addressing the Forest Service proposal to harvest 8 MMBF of timber from approximately 800 acres while constructing 7.5 miles of roads in the Alec timber sale and to harvest 6.5 MMBF of timber from aproximately 650 acres while constructing 3 miles of road in the Santim timber sale. The area being analyzed approximately 10,000 acres. The Forest Service is the Lead Agency. Edward L. Schultz, Forest Supervisor, Colville National Forest is the responsible official.

The Draft EIS will be tiered to the Final EIS for the Colville National Forest Land and Resource Management Plan (December, 1988). The Forest Land and Resource Management Plan's Management Area direction for this analysis area is approximately 50% Wood/Forage, 40% Scenic Timber, 5% Winter Range, and 5% Scenic/Winter Range. The proposed project includes a portion of the Profanity Roadless Area which was considered but not selected for Wilderness designation. The analysis area is adjacent to a large area designated Semi-primitive, Non-motorized Recreation by the Forest Land and Resource Management Plan.

Preliminary issues identified are unroaded areas, recreation trails, sensitive animals, big game winter range, sedimentation, timber production, and stagnant, submerchantable timber stands.

Initial scoping began in November, 1989. Scoping will include identifying issues; determining alternative driving issues; and identifying the objectives for the alternatives. An informal public meeting will be held at the Republic Ranger District office on March 5, 1990. Your comments are appreciated throughout the analysis process. The draft environmental impact statement is expected to be completed about September, 1990. The final environmental impact statement is scheduled for completion by January, 1991.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir., 1986) and *Wisconsin Heritages Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

Dated: February 5, 1990.

Kermit J. Link,

Acting Forest Supervisor.

[FR Doc. 90–3479 Filed 2–13–90; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 91043–0040]

Foreign Availability Determination; High Purity Polycrystalline Silicon

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of positive determination.

SUMMARY: Under the authority of the Export Administration Act of 1979, as amended (EAA), the Deputy Assistant Secretary for Export Administration has determined that foreign availability exists for certain high purity polycrystalline silicon to controlled destinations such that current controls are ineffective in achieving their purposes. High purity polycrystalline silicon is controlled under ECCN 1757A(f) of the Commodity Control List (CCL) (15 CFR 799.1, Supp. 1) of the Export Administration Regulations (EAR) (15 CFR 730 *et seq.*). The Commerce Department will publish the appropriate changes to the EAR in a future issue of the **FEDERAL REGISTER**.

FOR FURTHER INFORMATION CONTACT: Dr. Irwin M. Pikus, Director, Office of Foreign Availability, room SB–097, Department of Commerce, Washington, DC 20230; Telephone: (202) 377–8074.

SUPPLEMENTARY INFORMATION: .

Background

Sections 5(f) and (h) of the EAA require the Department of Commerce to review claims of foreign availability of items controlled for national security reasons. Part 791 of the EAR establishes the procedures and criteria for determining foreign availability. The Secretary of Commerce or his designee is authorized by statute to determine whether foreign availability exists within the meaning of the EAA.

With limited exceptions, the Department of Commerce may not

maintain national security controls on exports of an item to countries when it has been determined that items of comparable quality are available in fact to such countries from foreign sources in quantities sufficient to render the controls ineffective in achieving their purpose.

On September 12, 1989, OFA initiated a foreign availability assessment on high purity polycrystalline silicon in response to two claims filed with OFA, pursuant to section 5(f)(1)(A) of the EAA. Polycrystalline silicon is controlled for national security reasons under ECCN 1757A(f) of the CCL. The Department published a notice of initiation of the assessment in the **Federal Register** on December 6, 1989 (54 FR 50422).

After completion of the foreign availability assessment, OFA provided it to the Deputy Assistant Secretary for Export Administration. Having considered the assessment and other relevant information, the Deputy Assistant Secretary for Export Administration determined that, within the meaning of Section 5 of the EAA, foreign availability exists to controlled countries for polycrystalline silicon with the following equivalent characteristics: (1) Impurity concentrations: boron—greater than or equal to 0.08 ppba, phsophorus—greater than or equal to 0.31 ppba, and, carbon—greater than or equal to 0.3 ppma; or, (2) resistivity less than or equal to 3400 ohm-cm (P-type) and less than or equal to 270 ohm-cm (N-type). In accordance with section 5(f)(3)(b) of the EAA, all interested government agencies, including the Departments of State and Defense, were given the opportunity to provide comments on the assessment and the determination.

The Department of Commerce will soon publish regulations in the **Federal Register** amending the national security export controls on high purity polycrystalline silicon. Initially, the Department intends to remove validated licensing requirements to all non-controlled destinations. Following multilateral review by the Coordinating Committee, the Department of Commerce will make appropriate changes to the licensing requirements for exports to controlled countries and publish them in the **Federal Register**.

If the Office of Foreign Availability receives new evidence affecting this foreign availability determination, OFA may reevaluate its assessment. Inquiries concerning this assessment should be sent to Dr. Irwin M. Pikus, Director of OFA, at the above address.

Dated: February 9, 1990.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 90-3540 Filed 2-13-90; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by the South Essex Sewerage District from an Objection by the State of Massachusetts

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Request for comments on appeal.

The South Essex Sewerage District, Massachusetts (SESD) has appealed to the Secretary of Commerce from an objection by the State of Massachusetts (State) to is certification that its proposal to modify secondary treatment requirements for discharge into marine waters under the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1251 *et seq.*, for which a waiver from the U.S. Environmental Protection Agency must be obtained, is consistent with the State's coastal zone management program. The appeal is taken pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act, as amended (CZMA), 16 U.S.C. 1451 *et seq.*, and the Department's implementing regulations, 15 CFR part 930, subpart H.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122, respectively.

SESD requests that the Secretary override the State's consistency objection based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) The proposed activity furthers one or more of the competing national objectives or purposes contained in sections 302 or 303 of the CZMA; (2) the adverse effects of the proposed activity on the natural resources of the coastal zone, when the activity is performed separately or when its cumulative effects are considered, do not outweigh its contribution to the national interest (the national interests to be balanced are limited to those recognized in or defined by the objectives or purposes of the CZMA); (3) the proposed activity will not violate any requirements of the Clean Air Act or the FWPCA; and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with the State's coastal management program. 15 CFR 930.121.

Public comments are invited regarding the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within thirty days of the publication of this notice and should be sent to Stephanie S. Campbell, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235. Copies of comments should also be sent to Jan Smith, Massachusetts Coastal Zone Management Office, Executive Office of Environmental Affairs, 100 Cambridge Street, Boston, Massachusets 02202 and to Wendy L. Thayer, Esquire, Serafini, Serafini and Darling, 63 Federal Street, Salem, Massachusetts 01970.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the Massachusetts Coastal Zone Management Office and the Office of the Assistant General Counsel for Ocean Services, NOAA.

FOR ADDITIONAL INFORMATION CONTACT: Stephanie S. Campbell, Attorney-Advisr, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235, (202) 673-5200.

Dated: February 6, 1990.

Thomas A. Campbell,

General Counsel.

[FR Doc. 90-3454 Filed 2-13-90; 8:45 am]

BILLING CODE 3510-08-M

International Whaling Commission; Meetings

AGENCY: National Marines Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of meetings.

SUMMARY: NOAA makes use of an Interagency Committee to assist in preparing for meetings of the International Whaling Commission (IWC). This notice sets forth guidelines for participating on the Committee and a tentative schedule of meetings and other important dates.

DATES: See "**SUPPLEMENTARY INFORMATION**" for dates of scheduled meetings.

ADDRESSES: Recommendations to the U.S. Commissioner to the IWC and nominations to the U.S. delegation to the IWC should be sent to: The United States Commissioner to the International Whaling Commission, Office of the Dean, Texas A&M University, Galveston, Texas with a copy sent to Becky Rootes, Office of International Affairs, Rm. 7276, NMFS, 1335 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Becky Rootes, Office of International Affairs, National Marine Fisheries Service, Department of Commerce, Washington, DC 20910. Phone: (301) 427–2276.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. This authority has been delegated to the Under Secretary of NOAA. The U.S. Commissioner to the IWC has primary responsibility with the Secretary for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce, and assisted by the Department of the Interior, the Marine Mammal Commission, and other interested agencies.

Each year NOAA conducts a series of meetings and other actions to prepare for the annual meeting of the IWC which is held in the summer. The major purpose of the preparatory meetings is to provide for participation in the development of policy by members of the public and non-governmental organizations interested in whale conservation. NOAA believes that this participation is important for the effective development and implementation of U.S. policy concerning whaling, and such participation is and shall continue to be, a prerequisite to the establishment of U.S. negotiating positions for IWC meetings.

Because the meetings discuss U.S. negotiating position, the substance of the meetings must be kept confidential. For example, proposed position papers that may be circulated at a meeting for discussion cannot be removed from the meeting site and must be collected at the close of each meeting.

Any person with identifiable interest in United States whale conservation policy may participate, but NOAA reserves the authority to inquire about the interest of any person who appears at a meeting and to determine the appropriateness of that person's participation. Persons who represent foreign governments may not attend. These stringent measures are necessary to promote the candid exchange of information and protect the confidentiality of U.S. negotiating positions. Such measures are a necessary basis for the relatively open process of preparing for IWC meetings that characterizes current practice.

The tentative schedule of meetings and deadlines, including those of the IWC and deadlines for the preparation of position papers during 1990 is as follows:

February 16, 1990—Interagency Committee Meeting to continue preparations for the 1990 IWC meetings. Interested persons who are unable to attend are welcome to submit comments. Recommendations to the U.S. Commissioner should be sent to: The United States Commissioner to the International Whaling Commission, at the above address.

March 1, 1990—Nominations for the U.S. Delegation to the June IWC meetings are due to the U.S. Commissioner, with a copy to Becky Rootes at the address above. All persons wishing to be considered pursuant to the U.S. Commissioner's recommendation to the Department of State concerning the composition of the Delegation should ensure that nominations are received by this date. Prospective Congressional advisors to the Delegation should contact the Department of State directly.

March 16, 1990—Tentative Interagency Committee meeting to review Unites States agenda changes for forwarding to the IWC Secretariat.

March 30, 1990—Publish in the **Federal Register** the Agency views on (1) the current population levels and annual net recruitment rate of bowhead whales, (2) the nature and extent of the aboriginal/subsistence need for bowhead whales, (3) the level of take of bowhead whales that is consistent with provisions of the IWC aboriginal/subsistence whaling management scheme and (4) a list of documents reviewed by NOAA and used by the Administrator in formulating these views.

May 4, 1990 and June 1, 1990—Tentative Interagency Committee Meeting dates for finalizing preparations for 1990 IWC meetings.

Persons who would like to be included in IWC Interagency Committee meetings may contact Becky Rootes at the address or telephone number provided above to obtain meeting times and location.

Authority: 16 U.S.C. 1801 *et seq.*

Henry R. Beasley,

Director, Office of International Affairs.

[FR Doc. 90–3450 Filed 2–13–90; 8:45 am]

BILLING CODE 3510–22–M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Proposed Collection of Information; Survey of Household Use of Cigarette Lighters and Matches

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a proposed collection of information in the form of a survey of households about use of cigarette lighters and matches. The requested expiration date is June 30, 1990.

Fires caused by children playing with cigarette lighters and matches are the leading cause of fire-related deaths among children younger than five years of age. The Commission estimates that during the years 1980 through 1985, on average 120 persons died and 750 persons were injured each year in fires started by children playing with cigarette lighters. Children younger than five years of age die in fires at a rate that is twice the rate for the population as a whole. One-third of the fire deaths of children younger than five years of age are the result of child-play, usually with cigarette lighters or matches.

In the **Federal Register** of March 3, 1988 (53 FR 6833) the Commission began a rulemaking proceeding which may result in the establishment of mandatory performance requirements for cigarette lighters to make them resistant to operation by children.

The Commission has developed a proposed survey to obtain information about use of cigarette lighters and matches in households. The Commission will use the information obtained from this survey to assess and compare the

risks of lighters and matches used in the household. The Commission will also use the information obtained from this survey to establish a base line from which potential benefits and costs of mandatory or voluntary requirements for child-resistant lighters may be calculated.

Additional Details About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.
Title of information collection: Survey on Cigarette Lighters and Matches.
Type of request: Approval of a new plan.
Frequency of collection: One time.
General description of respondents: Persons living in households.
Total number of respondents: 1000.
Hours per response: 0.15.
Total hours for all respondents: 150.
Comments: Comments about this request for approval of a collection of information should be addressed to Donald Arbuckle, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395–7340. Copies of the request for approval of a collection of information are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: February 8, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 90–3499 Filed 2–13–90; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Executive Level Group for Defense Corporate Information Management; Meeting

AGENCY: Deputy Secretary of Defense.

ACTION: Notice of Open Meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Commission Action (Pub. L. 92–463), the Deputy Secretary of Defense announces a planning meeting for the Executive Level Group for Defense Corporate Information Management. The agenda for the initial meeting is to obtain an overview of the DoD Information Resources Management (IRM) program and discuss the basic tasking for the Executive Level Group. Space at the conference facility is limited.

DATE AND TIME: 26 February 1990, 09:30 a.m.–5 p.m.

ADDRESS: Hill Conference Center, Theodore Roosevelt Hall, Building 61, National Defense University, Fort McNair, Washington, DC.

Due to limited parking and public access to Fort McNair, shuttle bus service will be available from the Pentagon—Metro exit along the South Parking Lot access road—at 8:30 and 8:50 a.m. Return bus service will depart from the Hill Conference Center at 12:30, 5:10, and 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: William H. Leary III, Director of Review and Control, Department of Defense (202) 695–0561.

Linda M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense, February 9, 1990.

[FR Doc. 90–3505 Filed 2–13–90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Intent to Prepare Environmental Impact Statements for the Army's Proposed Base Realignment and Closure Actions

AGENCY: Department of Army, DOD.

ACTION: Notice of Intent to Prepare Environmental Impact Statements for the Army's Proposed Base Realignment and Closure Actions.

SUMMARY: The Army proposes to close, consolidate, or realign Army installations, headquarters and activities for the purpose of streamlining operations, increasing efficiencies and eliminating functions that are no longer required to accomplish the Army mission. Environmental impact statements will be prepared for the following actions:

—Closing Fort Ord, California and restationing of the 7th Infantry Division (Light) now at Fort Ord to another Army installation;
—Closing Fort McClellan, Alabama, and transferring the Military Police and Chemical schools to other Army installations; and
—Closing Sacramento Army Depot, California, and transferring its missions and functions to other depots with excess capacity.

The Army will consider the no action alternative for each of the proposed closings, consolidations and realignments.

Other consolidations and realignments will be analyzed through environmental assessments or records of environmental consideration. If the assessments or records of environmental consideration show higher level environmental analyses are needed, they will be prepared.

Scoping

The Army will conduct scoping meetings on or near the installations mentioned above. As soon as dates and locations of the scoping meetings have been established, they will be published in local newspapers which serve the population near the affected installations. The purpose of the meetings will be to gather information from the public about the issues they would like to see addressed in the EIS's. Comments may be made orally or in writing at the meetings, or they may be sent to Mr. Steve Miller, Headquarters Department of the Army, ATTN: DAEN–ZCI–A, Washington, DC, 20310–2600. If you have questions, you may call Mr. Miller at (202) 693–5039.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 90–3463 Filed 2–13–90; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 13-15 March 1990.

Time: 0745–1600, 14 Mar, Ft Rucker, AL; 0745–1530, 15 Mar, St. Louis, MO.

Place: Fort Rucker, Alabama and St. Louis, Missouri.

Agenda: The Army Science Board Ad Hoc Subgroup on Army Analysis will conduct meetings/discussions to determine the type and extent of analysis done during the development and assessment of requirements for aviation materiel systems and force structure, and also to determine how the requirements of the user community are analyzed by the materiel developer. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably interwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted

for further information at (202) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90–3441 Filed 2–13–90; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 10 March 1990.

Time: 0900–1630 hours.

Place: Colorado Springs, Colorado.

Agenda: The Army Science Board Steering Group will meet to discuss future Army Science Board study topics and potential Summer Studies as well as how the Army Science Board can provide assistance. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90–3442 Filed 2–13–90; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Integrity of Unit Prices.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson, Office of Federal Acquisition Policy, (202) 523–3781 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

FAR 15.812–1(c) and the clause at FAR 52.215–26, Integrity of Unit Prices, require offerors and contractors under Federal contracts to identify in their proposals those supplies which they will not manufacture or to which they will not contribute significant value. The policies included in the FAR are required by section 501 of Public Law 98–577 (for the civilian agencies) and section 927 of Public Law 99–500 (for DoD and NASA). This information will be used by contracting officers to determine whether the intrinsic value of an item has been distorted through allocation of overhead costs and whether such items should be considered for breakout.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 7,822; responses per respondent, 97; total annual responses, 758,734; hours per response, .084; and total response burden hours, 63,734. This represents no change from the current burden approved by OMB under control number 9000–0080.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0080, Integrity of Unit Prices.

Dated: February 5, 1990.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 90–3413 Filed 2–13–90; 8:45 am]

BILLING CODE 6820–JC–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP90–78–000]

Panhandle Eastern Pipe Line Co.; Change in Tariff

February 8, 1990.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on February 5, 1990, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 32–AQ.1
First Revised Sheet No. 32–AQ.2
Second Revised Sheet No. 32–BU.2
First Revised Sheet No. 32–BU.3

An effective date of March 7, 1990 is proposed for these tariff sheets.

These tariff sheets are being filed in order to add a tariff provision to set forth the procedures by which shippers and potential shippers may access Panhandle's electronic customer interface system, $LINK_{TM}$. The $LINK_{TM}$ system will allow any shipper or potential shipper to request transportation service, execute and amend Transportation Agreements, nominate and schedule receipts and redeliveries of gas, and request transportation service at less than the maximum rates pursuant to Panhandle's Rate Schedules PT-Firm and PT-Interruptible.

This new provision states that utilization of the $LINK_{TM}$ system will satisfy existing provisions in these Rate Schedules which require written requests for such information.

Panhandle states that copies of its filing have been served on all jurisdictional sales and transportation customers and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before February 15, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–3423 Filed 2–13–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–79–000]

Trunkline Gas Co.; Change in Tariff

February 8, 1990.

Take notice that Trunkline Gas Company (Trunkline) on February 5, 1990, tendered for filing the following

revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 9–CC
Original Sheet No. 9–CC.1
Third Revised Sheet No. 9–DG.1

ORIGINAL SHEET NO. 9–DG.2

First Revised Sheet No. 9–JT

An effective date of March 7, 1990 is proposed for these tariff sheets.

These tariff sheets are being filed in order to add a tariff provision to set forth the procedures by which shippers and potential shippers may access Trunkline's electronic customer interface system, LINK$_{TM}$. The LINK$_{TM}$ system will allow any shipper or potential shipper to request transportation service, execute and amend Transportation Agreements, nominate and schedule receipts and redeliveries of gas, and request transportation service at less than the maximum rates pursuant to Trunkline's Rate Schedules PT-Firm and PT-Interruptible. In addition, tariff provision has been added which sets forth procedures by which buyers or potential buyers may access LINK$_{TM}$ to request storage service, execute and amend storage service agreements, and nominate and schedule injection and withdrawal of gas pursuant to Trunkline's Rate Schedule SAS.

Trunkline states that copies of its filing have been served on all jurisdictional sales and transportation customers and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before February 15, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–3424 Filed 2–13–90; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Special Research Grant Program Notice 90–3; X-Ray Lithography.

AGENCY: Department of Energy, (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Energy Research (ER) of the Department of Energy (DOE) is interested in transferring its synchrotron radiation source technology to U.S. industry for the mass-production of integrated circuit chips with x-ray lithography. While it is recognized that the field of microlithography is moving rapidly and new technical approaches are emerging, it is the objective of this research endeavor to implement the required technology transfer over an approximately 2-year period so as to affect the U.S. industrial capability in x-ray lithography in the mid-1990's time frame. To facilitate this transfer, the DOE plans to take steps that may include a pre-application meeting and workshops to provide technical information that may be needed by potential applicants. The DOE is seeking grant applications to design, fabricate, and test a synchrotron device that would be commercially viable for x-ray lithography consistent with the above time table. Designs may employ conventional or superconducting magnets. In accordance with language in the Senate Report on the Energy and Water Development Appropriations Act for Fiscal Year 1990, (Senate Report 101–83) that was upheld in the Conference Report, House Report 101–235, this initiative is restricted to for-profit, domestic firms in order to stimulate the U.S. computer chips manufacturing industry. A domestic firm is a U.S. citizen or U.S. business organized or incorporated under the laws of the U.S. or a state or local government, or other jurisdiction within the U.S. or instrumentality thereof. If the applicant is a domestic corporation which has foreign ownership, then the controlling interest in the corporation must be held by a U.S. citizen or corporation. If the applicant is a partnership, then its controlling interest must be held by a U.S. citizen of corporation.

Teaming arrangements, including joint ventures, are permitted in order to maximize available scientific resources, equipment, and personnel. Multiple applications are permissible; however, each application must be limited to a single design. In order to be evaluated for possible award, each grant application must offer at least 50 percent cost-sharing, which would be derived from private sector sources. Furthermore, the DOE expects that all work will be performed by domestic, for-profit firms.

DATES: To permit timely consideration for award in Fiscal Year 1990, formal applications submitted in response to this notice should be received by the Division of Acquisition and Assistance Management no later than April 16, 1990. Potential applicants should advise the DOE in writing by March 12, 1990. At the address below of their interest in order to assure that they will be notifed in advance and invited to any pre-application meetings or workshops.

ADDRESSES: Completed applicants referencing Program Notice 90–3 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER–64, room G–236, Washington, DC 20545, Attn: Program Notice 90–3.

FOR FURTHER INFORMATION CONTACT: Dr. Walter M. Polansky, Division of Advanced Energy Projects, ER–16 U.S. Department of Energy, Washington, DC 20545. Telephone inquiries may be made to (301) 353–5995.

SUPPLEMENTARY INFORMATION: The Department expects to make two grants, each of 2-year duration, beginning in 1990 to meet the objective of this research initiative.

Proposed activities should be structured in two, sequential phases. Phase I, to be nominally 6 months in duration, would consist mainly of concept evaluations and detailed designs. Fabrication and performance testing would be conducted during Phase II. It is anticipated that approximately $15,000,000 will be obligated for this initiative from Fiscal Year 1990 and Fiscal Year 1991 funds. Up to $5,000,000 is available in Fiscal Year 1990.

The Department believes that a complete grant application as established by 10 CFR part 605 should not exceed 75 pages. The application should present the conceptual design, and describe activities to fabricate and performance test a synchrotron x-ray source that would be commercially viable for x-ray lithography. The application should discuss the impact that the proposed compacy synchrotron device, if successful, would have on the U.S. industrial capability in x-ray lithography in the mid-1990's and should analyze the prospects for the synchrotron's meeting performance specifications. A discussion of the technical issues being addressed and a plan for incorporating this x-ray source

into the industrial base must also be included. The application should identify the means and resources for supplying the device to the industrial marketplace and for its subsequent utilization.

The evaluation criteria for applications submitted under this Program Notice will be those listed in (DOE/ER-0249) "Application and Guide for the Special Research Grant Program, 10 CFR part 605," October 1985. Several criterial have been elaborated upon to reflect the special features of this initiative: (1) *The overall scientific and technical merit of the project.* Particular emphasis will be placed on the technological soundness of the expected product; (2) *The relevance of the stated objectives to the ER program.* Consideration will be given to the impact the proposed device will have on the U.S. microchip industry's competitive posture in the mid-1990's time frame; (3) *The appropriateness of the proposed method or approach.* In addition to addressing the proposed approach to the design and fabrication of the device, this criterion will also be applied to the proposed arrangements, regarding the utilization of the synchrotron x-ray source for microchip fabrication; (4) *The competence and experience and known past performance of the applicant, principal investigator and/or key personnel;* (5) *The adequacy of the applicant's facilities and resources.* Criteria (4) and (5) will address the personnel and facilities of the overall team, including subawardees; and (6) *The appropriateness and adequacy of the proposed budget.*

Allocation of patent rights and rights to technical data shall be in accordance with applicable statutes and DOE regulations and policies.

DOE is under no obligation to pay for any costs associated with the preparation or submission of applications. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted.

Application kits which include pertinent portions of 10 CFR part 605 are available from the U.S. Department of Energy, Division of Acquisition and Assistance Management (see above address). Telephone requests may be made by calling (301) 353-5995. Instructions for preparing an application are included in the kit. The Catalog of Federal Domestic Assistance number for this program is 81.049.

Issued in Washington, DC on February 6, 1990.

D.D. Maybew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 90-3433 Filed 2-13-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed for the Period of December 29, 1989 Through January 5, 1990

During the week of December 29, 1989 through January 5, 1990, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 7, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 29, 1989 through January 5, 1990]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 26, 1989	Arco/Pfarr Super Service, Memphis, TN	RR304-7	Request for modification/rescission in the ARCO refund proceeding. If granted: The November 9, 1989 Decision and Order (Case No. RF304-3662) issued to Pfarr Super Service would be modified regarding the firm's application for refund submitted in the ARCO refund proceeding.
Jan. 2, 1990	Lloyd R. Makey, Idaho Falls, ID	LFA-0019	Appeal of an information request denial. If granted: The December 13, 1989 Freedom of Information Request Denial issued by the Office of the Inspector General would be rescinded and Lloyd R. Makey would receive a copy of the investigation by the Department of Energy's Office of Inspector General concerning Mr. Makey.
Jan. 3, 1990	Gulf/Wingert Oil Company, Washington, DC	RR300-3	Request for modification/rescission in the Gulf refund proceeding. If granted: The December 15, 1989 Decision and Order (Case No. RF300-4871) issued to Wingert Oil Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Jan. 5, 1990	Oasis Petroleum Corporation, Washington, DC	LEF-0007	Implementatin of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in connection with November 20, 1989 Court Order entered into with Oasis Petroleum Corporation.
Jan. 5, 1990	Brilad Oil Company, Vidalia, GA	LEE-0009	Exception to the reporting requirements. If granted: Brilad Oil Company would not be required to file Form EIA-782B, "Resellers'/ Retailers' Monthly Petroleum Product Sales Report."

REFUND APPLICATIONS RECEIVED

Dec. 29, 1989 through Jan. 5, 1990.	Shell Oil refund, applications received.	RF315-9719 through RF315-9768.

[FR Doc. 90-3493 Filed 2-13-90; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of January 5 through January 12, 1990

During the Week of January 5 through January 12, 1990, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated February 6, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 5 through January 12, 1990]

Date	Name and location of applicant	Case No.	Type of submission
January 8, 1990	Kenneth W. Shoopman, Pleasanton, CA	LFA-0020	Appeal of an Information Request Denial. If Granted: The December 27, 1989 Freedom of Information Request Denial issued by the San Francisco Operations Office would be rescinded, and Kenneth W. Shoopman would receive access to requested information.
January 8, 1990	David Dekok, Harrisburg, PA	LFA-0021	Appeal of an Information Request Denial. If granted: The information sought on the Three Mile Island nuclear accident would be released pursuant to a September 27, 1989 Freedom of Information Request.
January 9, 1990	Mary C. Scearcy, Morven, GA	LFA-0022	Appeal of an Information Request Denial. If granted: The December 8, 1989 Freedom of Information Request Denial would be rescinded and Mary C. Scearcy would receive access to the denied information.
January 10, 1990	Economic Regulatory Administration, Washington, DC.	LRD-0001	Motion for Discovery. If granted: The Economic Regulatory Administration would be granted discovery directed towards LaJet, Inc., LaJet Petroleum Company and Texas Napco, Inc., regarding matters pertinent to the Proposed Remedial Order issued to the three above-named entities by the Economic Regulatory Administration on February 13, 1987.
January 12, 1990	Ben A. Franklin, Washington, DC	LFA-0023	Appeal of an Information Request Denial. If granted: The January 2, 1990 Freedom of Information Request Denial issued by the Office of Administrative Services would be rescinded, and Ben A. Franklin would receive access to a copy of documents collected and prepared by Victor Stello, Jr. and submitted by him to the Senate Armed Services Committee on November 15, 1989.

REFUND APPLICATIONS RECEIVED

[Week of January 5 through January 12, 1990]

1/04/90	Herman Stude	RA272-19
1/04/90	Aristech Chemical Corporation.	RF300-10954
1/04/90	Homan & Siggins Fuel Oil Co..	RF307-10089
1/05/90 thru 1/12/90.	Atlantic Richfield Refund Application Received.	RF304-10989 thru RF304-11152
1/05/90 thru 1/12/90.	Shell Oil Refund Application Received.	RF315-9679 thru RF315-9780
1/05/90	Hubert Price	RF272-78432
1/06/90	Meshberger Bros. Stone Corp..	RF272-78430
1/08/90	Ned Trenhaile	RF272-78433
1/08/90	Champion Target Co.	RF272-78434
1/08/90	Wayne Kunes	RF272-78435

REFUND APPLICATIONS RECEIVED—Continued

[Week of January 5 through January 12, 1990]

1/10/90	Hethcoat's Gulf	RF300-10955
1/10/90	Ross' Gulf	RF300-10956
1/10/90	Wingert Oil Company	RF300-10957
1/11/90	Begando's Arco #1	RF304-11145
1/12/90	Lmc Ahisten Shell	RF315-9778
1/12/90	Lakewood Shell	RF315-9779
1/12/90	Maplewood Shell Service.	RF315-9780

[FR Doc. 90-3431 Filed 2-13-90; 8:45 am]

BILLING CODE 6450-01-M

Decision and Order Issued During the Period of October 16, 1989 Through January 12, 1990

During the period of October 16 through January 12, 1990, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exceptions proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person

receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issuance of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: February 6, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

Franken Oil and Distribution Co., Inc., Las Vagas, New Mexico, Lee–0005, Reporting Requirements

Franken Oil and Distributing Company, Inc. filed an Application for Exception from the Energy Information Administration (EIA) reporting requirements. The exception request, if granted, would relieve Franken Oil and Distributing Company, Inc. from its requirement to file Form EIA–782B, the "Resellers/Retailers Monthly Petroleum Products Sales Report." On January 11, 1990, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request be denied.

[FR Doc. 90–3432 Filed 2–13–90; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders for the Week of November 20 Through November 24, 1989

During the week of November 20 through November 24, 1989 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Reporters Committee for Freedom of the Press, 11/20/89, LFA–0006

The Reporters Committee for Freedom of the Press filed an Appeal from a partial denial by the Chief of the Freedom of Information and Privacy Acts Office. The Committee sought a complete copy of the report submitted by the DOE to the Department of Justice (DOJ) that explains the DOE's policies concerning the application of the FOIA to electronic records. The report was part of a survey of agency policies concerning the treatment of electronic records under the FOIA that the DOJ is conducting in order to develop government-wide positions on these issues. The DOE found that the withheld portions of the report fell within the deliberative process privilege of FOIA Exemption 5, because they consisted of personal views and recommendations. The DOE rejected the contention that the report cannot be deliberative merely because the recommendations of the DOJ in FOIA matters are not binding on other agencies. The DOE noted that government agencies consider DOJ recommendations in developing their FOIA policies, and consequently, DOJ recommendations are part of the deliberative process. Accordingly, the Appeal was denied.

William Albert Hewgley, 11/24/89, LFA–0004

William Albert Hewgley (Hewgley) filed an Appeal from a determination issued by the Chief Counsel of the Oak Ridge Operations Office (ORO) of the Department of Energy (DOE). The determination denied, in part, a Request for Information which Hewgley had filed under the Freedom of Information Act (FOIA). Hewgley requested from the ORO all materials relating to the procedures used in: (i) Special (security) investigations conducted by the DOE; (ii) field investigations conducted by the FRI and OPM; and (iii) personnel security interviews, hearing and appeal board proceedings. The DOE determined that the Chief Counsel had incorrectly applied FOIA Exemption 2 to Chapter 3 of ORO's Personnel Clearance and the Assurance Procedures Manual. Consequently, the DOE released a copy of that chapter to Hewgley. Further, in reviewing the Appeal, the DOE discovered that the Chief Counsel had not made a determination as to Chapter 3's Appendices which were also withheld from Hewgley. The DOE remanded the Appendices back to the Chief Counsel for a new determination justifying their non-disclosure or their release.

Motion for Discovery

T.E. Reserve Corporation, James G. Allison, Jr., 11/20/89, KRD–0400

T.E. Reserve Corporation (TERC) and James G. Allison, Jr., filed a Motion for Discovery in connection with their Statement of Objections to a Proposed Remedial Order issued to them by the Economic Regulatory Administration. The PRO alleges that the Petitioners violated the layering rule, 10 CFR 212.186, by reselling crude oil at a markup without performing any historical and traditional crude oil reselling service. The Petitioners discovery Motion sought information concerning (i) the legal bases of the ERA's allegations, (ii) the ERA's audit of TERC, (iii) the ERA's contemporaneous construction of the applicable regulations, and (iv) an ERA memorandum that describes the ERA's view of TERC's crude oil reselling activities and its relationship to other firms which miscertified crude oil. The DOE found that the Petitioners had failed to demonstrate that the discovery requested would lead to factual evidence relevant to any disputed issues in the proceeding. Accordingly, the Motion for Discovery was denied.

Refund Applications

ADA Resources, Inc./Galveston Wharves Board, 11/20/89, RQ24–539

The DOE issued a Supplemental Order granting the Galveston Wharves Board an additional $375.02 in funds in the Ada Resources, Inc. special refund proceeding. It was determined that this money, which remained in the Ada account after all claims had been paid, should be disbursed to Galveston, the most recent second-stage claimant in the proceeding, for use in a program previously approved by OHA.

Atlantic Richfield Company/Enro's Arco Service, 11/20/89, RF304–5467

The DOE issued a Decision and Order concerning an Application for Refund filed by Enro's Arco Service (Enro's) in the Atlantic Richfield Company special refund proceeding. The applicant was a retailer of gasoline that applied for a small claims refund. The applicant was also a party in *Bogosian* v. *Gulf Oil Corp.*, a class action suit against Arco, Gulf, and other major oil companies. As a result of the class action, Mr. Enro had received a payment of $939.75 in principal and $409.25 in interest in 1986. However, we have reviewed the class action and find that it has no impact on the present proceeding. Specifically, the class action involved violations of

contractual arrangements, tie-ins, and other business practices unrelated to any alleged violations on the part of Arco of the Mandatory Petroleum Price Regulations. Therefore, Enro is entitled to a full volumetric refund in this proceeding. The DOE concluded that Enro should receive a refund totaling $2,887, representing $2,211 in principal and $676 in accrued interest.

Atlantic Richfield Company/Fred Norris Truck & Auto Service, Et Al., 11/24/89, RF304–5233 Et Al.

The DOE issued a Decision and Order concerning nine Applications for Refund filed by Petroleum Funds, Inc., on behalf of seven applicants in the Atlantic Richfield Company (ARCO) special refund proceeding. Five applicants were retailers that applied for small claims. Two applicants were retailers that elected to limit their refunds to $5,000. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds totalling $25,514, representing $19,072 in principal and $6,443 in accrued interest.

Atlantic Richfield Company/General Electric Company, Et Al., 11/24/89, RF304–4263 Et Al.

The DOE issued a Decision and Order concerning nine Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end-users or reseller/retailers requesting refund of $5,000 or less. The refunds granted in this Decision totalled $40,250, including $10,163 in accrued interest.

Atlantic Richfield Company/Joplin Butane Gas Company, Et Al., 11/22/89, RF304–8747 Et Al.

The DOE issued a Decision and Order concerning four Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their purchases and were resellers or retailers requeting refunds equal to 41 percent of their allocable share of the Arco Consent Order fund up to $50,000. Therefore, each applicant was presumed injured. The refunds granted in this Decision totalled $108,209, including $27,323 in accrued interest.

Atlantic Richfield Company/Pequannock Feed & Coal, Et Al., 11/24/89, RF304–7604 Et Al.

The DOE issued a Decision and Order concerning twelve Applications for Refund in the Atlantic Richfield Company (ARCO) special refund proceeding. Each of the applicants adequately documented the volume of its ARCO purchases. All of the applicants were reseller/retailers requesting refunds of $5,000 or less. The refunds granted in this decision totalled $12,721.

Carolina Mills, Inc., 11/24/89, RF272–51257

The DOE's Office of Hearings and Appeals considered and granted an application for a subpart V crude oil refund filed by Carolina Mills, Inc., a textile manufacturer located in Maiden, North Carolina. The total refund granted was $11,434.

Clearview Gardens Corporations, 11/24/89, RF272–51896

The DOE's Office of Hearings and Appeals considered and granted an application for a subpart V crude oil refund filed by the Clearview Gardens Corporations, an operator of several apartment complexes located in Whitestone, New York. The total refund granted was $10,934.

Cornell Construction Co., Inc., 11/21/89, RF272–51555

The DOE's Office of Hearings and Appeals considered and granted an application for a subpart V crude oil refund filed by Cornell Construction Co., Inc., a construction firm located in Clinton, Oklahoma. The total refund granted was $14,376.

Exxon Corporation/Allegheny Airlines, Inc., 11/20/89, RF307–5733

The DOE issued a Decision and Order concerning an Application for Refund filed by Allegheny Airlines, Inc. in the Exxon special refund proceeding. Allegheny disagreed with Exxon's record of its purchases and submitted alternative monthly figures which it requested that the OHA accept in lieu of Exxon's figures. Because Allegheny's alternative figures were obtained from its actual invoice records from the consent order period, the DOE accepted its figures. The DOE determined that because it was an end-user, Allegheny was eligible to receive its full allocable share. Consequently, Allegheny was granted a refund of $202,516 ($164,007) in principal plus $38,509 in interest].

Exxon Corporation/American Int'l Rent-A-Car, Et Al., 11/20/89, RF307–432 Et Al.

The DOE issued a Decision and Order concerning 113 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was a retailer of Exxon products whose allocable share is less than $5,000, or an end-user. The DOE determined that each Applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $83,676 ($67,254 principal plus $16,422 interest).

Exxon Corporation/Boutte Exxon Service, Et Al., 11/20/89, RF307–2010 Et Al.

The DOE issued a Decision and Order concerning nine Applications for Refund filed in the Exxon special refund proceeding. Each of the applicants purchased directly from Exxon and were resellers or end-users. Seven of the applicants disagreed with Exxon's records of their purchases and submitted estimated alternative figures which they requested the OHA accept in lieu of Exxon's figures. Because all of the applicant's estimation techniques were clearly explained and their alternative figures were reasonable when compared to their other figures, the DOE accepted their figures. The DOE determined that each of the applicants should receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $8,791 ($7,120 in principal plus $1,671 in interest).

Exxon Corporation/City of New York, Health & Hospital Corporation, Off Track Betting, 11/22/89, RF307–8307, RF307–9709, RF307–9710

The DOE issued a Decision and Order concerning three Applications for Refund filed in the Exxon Corporation special refund proceeding. Because each applicant was an en-user which purchased directly from Exxon, the DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $31,161 ($25,047 principal plus $6,114 interest).

Exxon Corporation/Conservative Gas, Et Al., 11/24/89, RF307–5153 Et Al.

The DOE issued a Decision and Order concerning nine Applications for Refund filed in the Exxon Corporation special refund proceeding. Each firm purchased directly from Exxon and was a reseller of Exxon products. Each firm's allocable share exceeds $5,000. Instead of making an injury showing to receive its full allocable share, each applicant chose to accept the larger of $5,000 or 40 percent of its allocable share. The sum of the refunds granted in this Decision is $60,476 ($48,608 principal and $11,868 interest).

Exxon Corporation/Florida Power Corporation, 11/24/89, RF307–7744

The DOE issued a Decision and Order concerning an Application for Refund filed by Florida Power Corporation (Florida Power) in the Exxon Corporation special refund proceeding. Florida Power purchased products directly from Exxon. Florida Power disagreed with the gallonage information recorded on its Exxon volume sheet, and submitted alternative gallonage figures which it requested that the OHA accept in combination with Exxon's figures. The OHA agreed to accept Florida Power's figures because they were taken directly from the firm's purchase journal. As a public utility, Florida Power was granted a refund based on its full allocable share. Florida Power has certified that it will notify the appropriate regulatory body of any refund received, and will pass through the entire refund to its customers. The refund granted in this Decision is $465,100 ($373,845 principal plus $91,255 interest).

Exxon Corporation/U-Filler-Up No. 1, Et Al., 11/24/89, RF307–8455 Et Al.

The DOE issued a Decision and Order concerning nine Applications for Refund filed by U-Filler-Up, Inc. (UFUI) in the Exxon Corporation special refund proceeding. Because the outlets were under common ownership during the consent order period, and because UFUI's allocable share exceeds $5,000, its applications were consolidated to apply the presumptions of injury. Instead of making an injury showing to receive its full allocable share, UFUI elected to limit its claim to $5,000 or 40 percent of its allocable share, whichever was greater. In this case, $5,000 was greater. The total refund granted in this Decision is $6,221 ($5,000 principal plus $1,221 interest).

Getty Oil Company/Catco Getty, 11/21/89, RF265–2849, RF265–2869

The DOE issued a Decision and Order concerning two Applications for Refund filed by Catco Getty in the Getty Oil Company special refund proceeding. Catco documented the volumes of motor gasoline and middle distillates which it purchased indirectly from Getty through the Central Oil Co. and established eligibility for a refund of less than the $5,000 small claims limit. The refund which was calculated based upon the procedures outlined in *Pioneer Corp./E.I. duPont de Nemours & Company*, 14 DOE ¶ 85,190 (1986), totalled $6,855, including $3,556 in accrued interest.

Gulf Oil Corporation/Anderson's Gulf, 11/22/89, RF300–9998

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Federal Refunds, Inc. on behalf of Anderson's Gulf. The Application which Federal Refunds, Inc., submitted was incomplete. On several occasions the OHA requested that Mr. Anderson submit the required information but Mr. Anderson was unwilling to provide this information. Since the OHA has no reason to believe Anderson's Gulf was injured by Gulf's alleged overcharges, its Application was denied.

Gulf Oil Corporation/Bolduc Tire & Serv. Sta., Inc., Bolduc Service Centers, Inc., 11/22/89, RF300–8285, RF300–8286

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Because the firms were under common ownership during the consent order period, and because their combined allocable share exceeds $5,000, it is appropriate to consolidate these Applications when applying the presumptions of injury. The total refund granted in this Decision, inclusive of interest, is $6,797.

Gulf Oil Corporation/Brenner Oil Company, 11/20/89, RF300–8236

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Brenner Oil Company. Brenner established that it purchased some or all of its Gulf products indirectly from a Gulf jobber. The jobbers that supplied Brenner either have not applied in the Gulf proceeding, have not attempted to prove injury, or have already received a refund in the Gulf proceeding under an injury presumption. Accordingly, we treated Brenner in the same manner as we generally treat applicants who purchased directly from Gulf. Brenner received a refund of $13,255 (interest inclusive) under the 40 percent presumption of injury.

Gulf Oil Corporation/Buchanan Oil Company, Et Al., 11/21/89, RF300–9079 Et Al.

The DOE issued a Decision and Order concerning 15 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including interest, is $40,280.

Gulf Oil Corporation/Chapman Oil Company, Inc., 11/20/89, RF300–5487

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Chapman Oil Company, Inc., a consignee and reseller of Gulf refined products. The applicant's refund was granted utilizing the appropriate presumptions of injury. The total refund granted in this Decision, including both principal and interest, is $1,892.

Gulf Oil Corporation/Fastop Foods of E. Texas, Fastop Foods of E. Texas, Fastop Foods of E. Texas, 11/21/89, RF300–9964, RF300–9966, RF300–9968

The DOE issued a Decision and Order concerning three Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by P.A.D., Inc., on behalf of Fastop Foods of E. Texas. The OHA found that Fastop Foods of E. Texas made no purchases of Gulf products during the consent order period and was therefore ineligible to receive a refund based upon purchases of Gulf petroleum products. As a result, these three applications made on behalf of Fastop Foods of E. Texas were denied.

Gulf Oil Corporation/Huffman Gulf 11/20/89, RF300–5207

The DOE issued a Decision and Order concerning an Application for Refund submitted by an indirect purchaser in the Gulf Oil Corporation special refund proceeding. Because the indirect purchaser's supplier has elected to receive a refund utilizing a presumption of injury in this proceeding, the indirect purchaser's Application was approved under the same procedure as direct purchasers using a presumption of injury. The total refund granted in this Decision, which includes both principal and interest, is $780.

Gulf Oil Corporation/Martin Oil Company, 11/21/89, RF300–4261

The DOE issued a Decision and Order concerning one Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Application was approved using a presumption of injury. The total refund granted in this Decision, which includes both principal and interest, is $1,219.

Gulf Oil Corporation/Purcell's Gulf, Et Al., 11/21/89, RF300–10000 Et Al.

The DOE issued a Decision and Order concerning 29 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the

refunds granted in this Decision, including accrued interest, is $45,136.

Gulf Oil Corporation/Sarpol Gas Corp., Et Al. 11/21/89, RF300-10114 Et Al.

The DOE issued a Decision and Order concerning six Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $73,246.

Gulf Oil Corporation/Vern's E-Z-Go Station #17, Vern's E-Z-Go Station #733, 11/22/89, RF300-10598, RF300-10599

The DOE issued a Decision and Order concerning the Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Vern's E-Z-Go Station #17 and Vern's E-Z-Go Station #733. The applications were approved under the small claims presumption of injury. The sum of the refund granted in this Decision, including interest, is $6,797.

Gulf Oil Corporation/West Paces Ferry Gulf Service, B.F. McCurley, 11/22/89, RF300-10148, RF300-10150

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by B.F. McCurley. Because the two firms operated by Mr. McCurley were under common ownership during the consent order period, and because their allocable share exceeds $5,000, it is appropriate to consider them together when applying the presumptions of injury. Mr. McCurley collectively purchased 15,198,209 gallons of covered Gulf products, and his Applications were approved under the 40 percent presumption of injury. Since $5,000 exceeds 40 percent of Mr. McCurley's allocable share, the refund granted in this Decision, which includes both principal and interest, is $6,797 ($5,000 principal plus $1,797 in interest).

Gulf Oil Corporation/Zubyk's Gulf, Et Al., 11/22/89, RF300-10017 Et AL.

The DOE issued a Decision and Order concerning eight Applications for Refund submitted in the Gulf Oil Corporation special refund proceedings. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $15,026.

J.G. Boswell Company, 11/22/89, RF272-2790

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to J.G. Boswell Company based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The firm used the products in its farming operations, and determined its claim using actual purchase records and estimates. The applicant was an end-user of the products it claimed and was therefore presumed injured. A consortium of 30 states and two territories filed a Statement of Objections with respect to the applicant. The DOE found that the states' filings were insufficient to rebut the presumption of injury for end-users. Therefore, the Application for Refund was granted. The refund granted is $29,275.

Loffland Brothers Co., 11/20/89, RF272-25398, RD272-25398

Loffland Brothers Co., an oil drilling contractor, filed an application for refund as an end-user of refined petroleum products in the subpart V crude oil refund proceeding. A group of state governments filed a statement of objection to Loffland's claim and a related motion for discovery. After considering the claim and the objections, OHA determined that the states had failed to produce any convincing evidence to show that Loffland Brothers had been able to pass on the crude oil overcharges to its customers, and granted the refund application. The purported economic "evidence" submitted by the states consisted of theoretical generalizations that were not linked to the specific applicant. As in previous decisions, OHA rejected the states' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Loffland Brothers were injured by crude oil overcharges. The refund approved was $28,920. The states' motion for discovery was denied.

Murphy Oil Corporation/Little River Corporation, Et Al., 11/22/89, RF309-489 Et Al.

The DOE issued a Decision and Order granting refunds to eight applicants in the Murphy Oil Corporation special refund proceeding. In this Decision, four pairs of commonly owned applicants were considered, and the gallonage of each pair was combined to determine the appropriate injury presumption. The applicants were granted refunds under the medium-sized reseller injury presumption, as set forth in *Murphy Oil Corporation*, 17 DOE ¶ 85,782 (1988). The total gallonage approved in this Decision was 62,620,566 gallons, and the total of the refunds approved was $28,539 (comprised of $23,366 in principal and $5,173 in interest).

Murphy Service Station, Inc., Walter E. Murray, Jr., Hood's Pacemaster, 11/24/89, RF272-42079, RF272-42677, RF272-43802

The DOE issued a Decision and Order denying three Applications for Refund filed in the subpart V Crude Oil special refund proceeding. The Applicants were retailers of refined products.

New York University, 11/22/89, RC272-74

The DOE issued a Decision and Order rescinding the refund granted in the *Rock of Ages* Decision to New York University. New York University filed through Daniel B. Smith, a representative, who did not submit proof that he was authorized to represent the claimant. Accordingly, the Decision rescinded the refund amount of $24,160 for 30,200,262 gallons that was approved in *Rock of Ages*.

Nordstrom Oil Co./Iowa, 11/20/89, RQ22-540

The Doe issued a Supplemental Order granting the State of Iowa an additional $9.62 ($0.45 in principal plus $9.17 in interest) in funds in the Nordstrom Oil Co. special refund proceeding. It was determined that this money, which remained in the Nordstrom account after all claims had been paid, should be disbursed to Iowa, the only eligible second-stage claimant, for use in programs previously approved by OHA.

Pioneer Mill Co., 11/21/89, RF272-14309

The DOE issued a Decision and Order concerning an application for refund filed by Pioneer Mill Co. (Pioneer), a sugar processing company, in the subpart V crude oil proceeding. A group of States and Territories (the States) objected to Pioneer's application on the grounds that certain studies of the food and food processing industries may indicate that Pioneer was able to pass through increased petroleum costs to consumers during the petroleum price controls period. The States argued that this evidence was sufficient to rebut the end-user presumption relied upon by Pioneer and therefore the DOE should deny Pioneer's application. The DOE granted Pioneer's refund application, determining that the States had failed to show that Pioneer itself had passed through increased fuel costs.

School District of Greenville County, Et. Al., 11/22/89, RF272-20928 Et Al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 48 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of

the products it claimed and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $115,506. The applicants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Shell Oil Company/Missiouri Barge Line Company, Et Al., 11/20/89, RF315–7202 Et Al.

The DOE issued a Decision and Order granting 133 Applications for refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision is $121,249 ($100,076 principal plus $21,173 interest).

South Center Oil, Inc., Et Al., 11/24/89, RF272–60673 Et Al.

The DOE issued a Decision and Order, denying 15 Applications for Refund filed in the subpart V crude oil refund proceedings. Each applicant was either a reseller or a retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that they were injured due to the crude oil overcharges, they were ineligible for a crude oil refund.

Total Petroleum, Inc./American Bean & Grain, Et Al., 11/24/89, RF310–9 Et Al.

The DOE issued a Decision and Order concerning 13 Applications for Refund filed by purchasers of motor gasoline and/or No. 2 oils from Total Petroleum, Inc. The applicants sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Total. Since the allocable shares of nine applicants were less than $5,000, their refund claims were granted without a detailed demonstration of injury. The allocable shares of the remaining four applicants exceeded $5,000, however the applicants elected to accept 40% of their allocable share or $5,000, whichever was greater, rather than submit a demonstration of injury. Applying the criteria established in *Total Petroleum, Inc.*, DOE ¶ 85,452 (1988), the DOE granted refunds in this proceeding which total $71,123 ($58,648 principal, plus $12,475 interest).

Warrensburg Board and Paper Corporation, 11/20/89; RF272–8003, RD272–8003

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Warrensburg Board and Paper Corporation (Warrensburg) for its purchase of refined petroleum products during the period August 19, 1973 through January 27, 1981. A group of twenty-eight states and two territiories of the United States (the States) filed consolidated pleadings objecting to and commenting on the application. As evidence that Warrensburg passed on its increased costs, the States referred to a 1976 study by the President's Council on Wage and Price Stability and an affidavit by an economist stating that virtually every industry was able to pass through some costs to its customers. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the Applicant should receive a refund. In addition, the Motion for Discovery filed by the States was denied. The refund granted in this Decision is $4,896. Warrensburg will be eligible for additional refunds as additional crude oil overcharge funds become available.

Windham Gas & Oil Co./Ohio, 11/21/89; RQ43–538

The DOE issued a Supplemental Order granting the State of Ohio an additional $6.72 in funds in the Windham Gas & Oil Co., special refund proceeding. It was determined that this money, which remained in the Windham account after all claims had been paid, should be disbursed to Ohio, the only eligible second-stage claimant, for use in program previously approved by OHA.

Dismissals

Name	Case No.
Bruce Caley's Exxon	RF307–235
Chaney Oil Co. of Vicksburg	RF314–76
E–Z Go	RF300–10466
Fenton Farms, Inc	RF272–15570, RD272–15570
Gerald N. Stamp	RF272–17309, RD272–17309
Highway Exxon	RF307–826
Hind's General Gulf	RF300–10672
Hudspeth's Grocery	RF300–7345
Main Street Exxon	RF307–911
Odeen Hibbs Trucking Company	RF307–956
Pfarr Super Service	RF304–10424
Roy C. Jenksin, Inc	RF304–7511
Sinco American Oil Co., Inc	RF315–2609, RF315–2610, RF315–2611, RF315–2612, RF315–2613

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 7, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90–3494 Filed 2–13–90; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders for the Week of December 25 Through December 29, 1989

During the week of December 25 through December 29, 1989, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

REFUND APPLICATIONS

Charter Company/California, 12/26/89; RQ23–543

The DOE issued a Decision and Order granting the second-stage refund application filed by the State of California in the Charter Oil Company special refund proceeding. California requested a total of $1,779,000 for one program. The program is the Fuel Efficient Traffic Signal Management (FETSIM) program which provides grants to local agencies to retime traffic signal systems. The FETSIM program grants money to local agencies for the administration and implementation of retiming programs, and for training on the appropriate computer equipment. The DOE found that these programs would provide restitution to injured petroleum consumers by reducing automobile fuel consumption.

E.D.G., Inc./Keen, Inc., Marlex Petroleum, Inc., 12/27/89; RF311–3, RF311–6

The DOE issued a Decision and Order concerning two Applications for Refund submitted by Keen, Inc. (Keen) and Marlex Petroleum, Inc. (Marlex) in the E.D.G., Inc. (EDG) special refund proceeding. The applications of both Keen and Marlex were granted under the small claims presumption of injury after they submitted the required certifications as identified purchasers

that they purchased covered petroleum products from EDG on a regular basis during the consent order period. The sum of the refunds granted in this Decision and Order is $24,698.

Gulf Oil Corporation/Amoco Oil Company, 12/27/89; RF300–8304

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Amoco Oil Company. The DOE determined that some of Amoco's purchases were spot purchases. Amoco did not show that it was injured by these spot purchases and therefore did not receive a refund for these purchases. For Amoco's purchases of Gulf product which the DOE determined were not spot purchases, Amoco received a refund under the small claims presumption of injury. The total refund granted in this Decision, including accrued interest, is $6,875.

Gulf Oil Corporation/James Gulf Service, Roger Gulf, 12/28/89; RF300–8605, RF300–8607

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Because the firms were under common ownership during the consent order period, and because their combined allocable share exceeds $5,000, the DOE found it appropriate to consolidate these applications when applying the presumptions of injury. The total refund granted in this Decision, inclusive of interest, is $6,875.

Gulf Oil Corporation/Rainbow Oil Company, Inc., 12/26/89; RF300–5221

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. Although there was a change in ownership of the applicant firm, the previous and current owners had an agreement to share any refund received and, thus, the DOE did not need to determine who the proper recipient of the refund should be. The application was approved using a presumption of injury. The total refund granted in this Decision, including both principal and interest, is $2,142.

MacMillan Bloedel, Inc., 12/29/89; RF272–7154, RD272–7154

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to MacMillan Bloedel, Inc., a pulp, paper and lumber manufacturer. In reaching its determination, the DOE rejected the Objections to the applicant's claim submitted by a group of States and denied the States' Motion for Discovery. Specifically, the DOE restated its position that industry-wide data in general is insufficient to rebut the presumption that an end-user outside of the petroleum industry was injured by crude oil overcharges. The DOE also determined that the States' showing of sustained growth and profitability of a particular industry or firm does not rebut the end-user presumption. Accordingly, Bloedel was granted a refund of $68,879.

Manville Corporation, 12/26/89; RF272–42172

The DOE issued a Decision and Order granting an Application for Refund filed in the crude oil special refund proceeding. The applicant was an end-user who purchased 915,829,570 gallons of petroleum products. The firm had purchased 7,721,273 gallons of asphalt emulsion, which the applicant reduced by 3,320,147 gallons to adjust for the percentage of non-petroleum product in the emulsion. The applicant was granted a refund equal to its full allocable share. The Decision granted a refund of $732,664.

Paynesville Farmers Union Co-Op, 12/26/89; RF272–45422

The DOE issued a Decision and Order granting an Application for Refund filed in the crude oil special refund proceeding. The applicant was an agricultural cooperative that certified it would pass through the refund to its members and that it would indemnify the DOE for claims its members already received through other proceedings. Accordingly, the applicant was granted a refund equal to its full allocable share. The Decision granted $4,155 for 5,193,750 gallons purchased.

Western Contracting Corporation, 12/29/89; RF272–7133, RF272–7133

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Western Contracting Corporation, a construction contractor primarily involved in highway and marine construction. In reaching its determination, the DOE rejected the Objections to the applicant's claim submitted by a group of States and denied the States' Motion for Discovery. The DOE held that industry-wide data, with no particular reference to the applicant, is insufficient to rebut the presumption of injury for end-users outside of the petroleum industry. The DOE also stated that the mere contention that an industry had the ability to pass through overcharges is not convincing evidence that a particular claimant was likely in fact to have passed through overcharges. The refund granted to Western was $21,065.

REFUND APPLICATIONS

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case No.	Date
Atlantic Richfield Co./Frank's Arco et al.	RF304–4874	12/28/89
Exxon Corp./Carolina Power Light Company.	RF307–6729	12/28/89
Getty Oil Co./H. McLain Oil Co., et al.	RF265–2814	12/29/89
Gulf Oil Corp./Carr's Gulf et al.	RF300–7250	12/29/89
Gulf Oil Corp./ Edward J. Seifert et al.	RF300–3848	12/28/89
Gulf Oil Corp./ Frederick A. Brendel, Jr.	RF300–10252	12/27/89
Gulf Oil Corp./Martin Self Service et al.	RF300–7624	12/28/89
Gulf Oil Corp./Ray-Laine Motor Service Corp.	RF300–7264, RF300–7266	12/27/89
Yorktown Central School District et al.	RF272–47493	12/27/89

DISMISSAL

The following submissions were dismissed:

Name	Case No.
Baxter Street Exxon	RF307–1995
Bruno's Exxon Service Station	RF307–1997
Colonial Exxon	RF307–1976
Joslin Tire Service	RF310–319
Ocar's Exxon	RF307–1963
Shaver's Exxon	RF307–1986

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 7, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90–3495 Filed 2–13–90; 8:45 am]

BILLING CODE 6450–01

Issuance of Decisions and Orders for the Week of January 15 Through January 19, 1990

During the week of January 15 through January 19, 1990 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Thurm & Heller, 1/17/90; LFA–0012

The law firm of Thurm & Heller filed an Appeal from a partial denial by the Manager of the Chicago Operations Office of a Freedom of Information Request. The law firm sought documents concerning an accident involving a high pressure steam line at Brookhaven National Laboratory on October 10, 1986, that killed two employees and injured two others. The DOE found that certain material withheld by the Manager pursuant to the deliberative process priviledge of FOIA Exemption 5 constituted factual informatiion that should have been released to the Appellant. The DOE also noted that since one of the injured employees and the families of the two employees killed in the accident had initiated a suit for damages, they no longer could have any expectation of privacy with respect to the injuries suffered by these three individuals. In addition, because the other injured employee's injuries were minor, he was found not to have a significant privacy interest in information concerning his injuries. Consequently, the DOE found that information pertaining to the injuries sustained by the workers could not be withheld pursuant to Exemption 6. The DOE agreed with the Manager that taped statements by witnesses would fall within the scope of exemption 6, if their release could cause harassment or retribution by the employers. Since there was insufficient evidence in the record concerning whether such harassment or might occur, the witnesses statements were remanded to the Manager for a new determination. Finally, the DOE determined that the Manager had incorrectly relied on documents whose release would interfere with an enforcement Exemption 7(A), which exempts from disclosure law enforcement proceeding, because the only pending proceeding—the civil suit for damages—was not a "law enforcement proceeding" as used in the FOIA. Accordingly, the Appeal was granted in part.

Request for Modification and or Rescission

Kenneth Walker, Southwestern States, Marketing Corporation, 1/16/90; LRR–0002, LRR–0003

The DOE issued a Decision and Order concerning two Motions for Reconsideration, one filed by Kenneth Walker and the other filed by the Trustee in Bankruptcy for the Estate of Southwestern States Marketing Corporation. Both motions pertain to the remedial order proceeding involving Mr. Walker and Southwestern and both sought reversal of certain deteminations rendered by OHA and the interlocutory order, *Southwestern States Marketing Corporation/Kenneth Walker*, 19 DOE ¶ 83,003 (1989), and in a letter determination issued by OHA on September 11, 1989. Specifically, Walker requested in his motion that OHA reconsider its previous determinations insofar as they (1) denied him access to the records of Southwestern's trading partners; (2) refused to compel the ERA to match purchases and sales in the computation of the alleged overcharge amount in the enforcement case; and (3) decided not to require the ERA to furnish complete copies of certain purchase and sales contracts to Walker and Southwestern's Trustee. In his motion, Southwestern's Trustee requested pricipally that OHA reconsider those determinations in which it (1) accorded no weight to certain arguments which the Trustee had raised in an untimely manner, and (2) found that the Trustee had waived all arguments regarding the incomplete state of certain contracts and business records in the proceeding. The DOE denied both reconsideration requests, finding that neither satisfied the regulatory criteria for the granting of such requests.

Refund Applications

Atlantic Richfield Company/William H. Flud, 1/16/90; RR304–6

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by William H. Flud (Flud) in the Atlantic Richfield Company (ARCO) special refund proceeding. The Motion was filed by Flud in response to a December 22, 1988 Decision and Order in which he was granted a volumetric refund in the ARCO proceeding but was denied a greater refund based upon an alleged, but unsubstantiated, disproportionate overcharge. In the Motion for Reconsideration, Flud reiterated his claim of disproportionate overcharge and requested an additional refund of $82,797.39, plus interest. However, the DOE found that Flud's allegations either were not substantiated and unrelated, or not shown to involve matters subject to the Mandatory Petroleum Allocation and Price Regulations. Thus, Flud's Motion was denied.

Fenton Farms, Inc., Et Al., 1/18/90; RF272–15570 Et Al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 59 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the alleged crude oil overcharges. Two of the applications had Objections from a corsortium of States and two Territories, which were withdrawn. In addition, twelve applicants filed their refund applications through Federal Refunds, Inc. (FRI). These applicants' checks were sent directly to the applicants rather than to FRI. The sum of the refunds granted in this Decision is $145,650. The applicants will be eligible for additional refunds as additional crude oil overcharge funds become available.

GAB Business Services, Inc., State Farm Mutual Automobile Insurance Company, 1/17/89; RF272–23654, RD272–23654, RF272–49421, RD272–49421

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to the GAB Business Services, Inc., and State Farm Mutual Automobile Insurance Company, based on their purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicants, both insurance companies, demonstrated the volumes of their claims by consulting contemporaneous records. The applicants were end-users of the products they claimed and were therefore presumed injured by the DOE. A group of States and Territories filed Objections to GAB's and State Farm's applications, contending that the firms were not injured because, due to the elasticities of supply and demand in any industry, they were able to pass through to customers any overcharges they suffered. The DOE found the States' Objections to be overly general and without merit. Accordingly, the DOE granted GAB and State Farm refunds of $26,128 and $37,512 respectively.

Gulf Oil Corporation/E–Z Shop Food Store, Et Al., 1/16/90; RF300–7702 Et Al.

The DOE issued a Decision and Order concerning six Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Applications were originally filed by P.A.D., Inc., whose president is Herbert Tanner. Herbert Tanner and P.A.D. have been denied the right to represent refund applicants before the Office of Hearings and Appeals and therefore, all correspondence, concerning these claims, including any refund checks, is sent directly to the applicants. Further, although Akin Energy, whose president is J. Reginald Akin, attempted to resubmit these claims on behalf of the six applicants, the Decision and Order finds that it would not be appropriate to send the refund checks to Akin. The applications considered in this Decision were approved using a presumption of injury. The sum of the refunds granted to this Decision, which includes principal and interest, is $9,653.

Gulf Oil Corporation/Sun Exploration and Production Company, 1/19/90; RF300–9567

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Sun Exploration and Production Company (Sun), a reseller of Gulf refined products. However, Sun had already submitted an application (Case No. RF300–2867) and had been granted a principal refund of $128 under the small claims presumption. These two Applications were considered together for the purposes of applying the presumptions of injury. Sun was granted a principal refund of $4,872 ($5,000–$128). The total refund granted to Sun in this Decision, including accrued interest, was $6,699.

Gulf Oil Corporation/Wingert Oil Company, 1/18/90; RF300–10957

The DOE issued a Decision and Order concerning a Decision issued on December 15, 1989. *Gulf Oil Corporation/Wingert Oil Company*, 19 DOE ¶85,837 (*Wingert*). On January 3, 1990, Robert S. Bassman of Bassman, Mitchell, and Alfano filed a Motion for Reconsideration objecting to the OHA's conclusions in *Wingert*. The OHA has determined that the Motion filed by Mr. Bassman deserves full consideration. Accordingly, the OHA has rescinded the refund granted to Wingert Oil Company (Case No. RF300–10886) until such time as the OHA determines who is the proper recipient of Wingert Oil Company's refund.

REFUND APPLICATIONS

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case No.	Date
Atlantic Richfield Co./Oils, Inc. et al.	RF304–7522	1/19/90
Atlantic Richfield Co./Raymond Zimberlin et al.	RF304–5601	1/17/90
City of Decatur et al.	RF272–5217	1/16/90
City of Des Moines et al.	RF272–42169	1/18/90
Colvert Dairy Products Co. et al.	RF272–75601	1/16/90
E.D.G., Inc./J.E. Dewitt, Inc.	RF311–4	1/17/90
E.D.G., Inc./ Petromar, Inc.	RF311–5	1/19/90
Exxon Corp./Con's Exxon Service et al.	RF307–4708	1/19/90
Gulf Oil Corp./ Farmer's Elevator Co. et al.	RF300–9275	1/16/90
Gulf Oil Corp./ James O. Gourley, Ted's Gulf, Meijer Supermarkets.	RF300–9521, RF300–9800, RF300–9918	1/18/90
Gulf Oil Corp./ Landsdale Gulf et al.	RF300–10002	1/17/90
Gulf Oil Corp./Time Oil Co.	RF300–9789	1/17/90
Hyway Concrete Pipe Co. et al.	RF272–77401	1/16/90
Lone Star Institutional Grocer et al.	RF272–75009	1/16/90
Moloki Electric Co., Inc. et al.	RF272–25399	1/19/90
Town of Highland Park et al.	RF272–75411	1/16/90
Union Tank Car Co. et al.	RF272–54500	1/18/90
Victor Stout	RF272–45371	1/16/90

DISMISSALS

The following submissions were dismissed:

Name	Case No.
Anacortes Arco	RF304–9309
Bob and Bill's Shell	RF15–7885
City of Bellevue	RF272–69864
City of Mesa	RF272–54808
Corum Energy Corp.	HRD–0302, HRH–0302
County of Hale	RF272–78373
D. Michael Cherry	RF315–7632
Dale County Board of Education	RF272–78370
Dart Mart	RF300–7359
David Dekok	LFA–0021
Decarolis Truck Rental, Inc.	RF272–44827
Demma Lakeside Exxon	RF307–9971
E.A. Mariani Asphalt Co.	RF272–78019
Erie County Water Authority	RF272–78228
Fahoum Shell	RF315–7868
Farmers Co-Op Elevator Co.	RF272–77298
Farmers Co-Op Oil Company	RF272–78272
Fredonia Valley Quarries	RF300–10888
Hanover Gulf	RF300–10898
Hugh Jordan Service Station	RF300–7348
Joseph Ciccone & Sons, Inc.	RF272–77425
Kirk Brown's Gulf	RF300–10831
Layos Shell	RF300–9910
Matignon High School	RF272–77871
Melvin F. Traband	RF315–1479
Mt. Pleasant Area School District	RF272–76174
North Shore Towers	RF272–7654, RD272–7654
Pearl City Elevator, Inc.	RF272–77604
Petromar, Inc.	RF311–11
Phil's Arco	RF304–5953
Ploof Truck Lines, Inc.	RF272–76891
Quality Mills, Inc.	RF272–77551
San Joquin Vegetable Growers	RF304–10506
Shinn & Sons Shell Service	RF315–7959
SIA Enterprises, Inc.	RF315–934, RF315–5806, RF315–5818
St. John's Cathedral	RF272–78381
Summer Gulf	RF300–7307
Sylvan Shell Service	RF315–7895
Texfi Industries, Inc.	RF272–78112
Thomaston Exxon	RF307–7793
Tom Freeland Trucking	RF272–78218
U.S. Postal Service	RF272–47770
Willers, Inc.	RF272–78217
Worth County Co-Op Oil Co.	RF272–77601

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 7, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90–3496 Filed 2–13–90; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[CFRL–3723–5]

Ambient Air Monitoring Reference and Equivalent Methods; Equivalent Method Determination

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has approved a modification to the Monitor Labs Model 8850 Fluorescent SO_2 Analyzer (Designated Equivalent Method EQSA–0779–039). The modification includes a microprocessor for data processing and capabilities for diagnostics, digital filtering, and temperature and pressure compensation. A determination has been made that a new designation will apply to the method as modified. The modified method is identified as follows:

EQSA–0390–075, "Monitor Labs Model 8850S SO_2 Analyzer", operated on a range of either 0–0.5 or 0–1.0 ppm.

This method is available from Monitor Labs, a Division of Lear Siegler Measurement Controls Corporation, 74 Inverness Drive East, Englewood, Colorado 80112.

This determination was made in accordance with 40 CFR 53.14, based on information submitted by the applicant on June 21, 1989 and December 20, 1989, subsequent to the original designation of the Monitor Labs Model 8850 Fluorescent SO_2 Analyzer (44 FR 44616, July 30, 1979). A test analyzer representative of the modified method has been tested by the applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that a new designation should apply to the method as modified. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina 27711, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated equivalent method, the analyzer is acceptable for use by States and other control agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any limitations (e.g., operating range) specified in the applicable designation (see description of the method above).

Technical questions concerning the method should be directed to the manufacturer. Additional information concerning this action may be obtained from Frank F. McElroy, Quality Assurance Division (MD–77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–2622.

Erich W. Bretthauer,

Acting Assistant Administrator for Research and Development.

[FR Doc. 90–3473 Filed 2–13–90; 8:45 am]

BILLING CODE 6560–50–M

Notice Proposing Granting of Exemption to Allied Signal, Inc., for the Continued Injection of Hazardous Waste Subject to Land Disposal Restrictions of Hazardous and Solid Waste Amendments of 1984

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Grant an Exemption to Allied-Signal, Inc., of Danville, Illinois, for the Continued Injection of Hazardous Waste.

SUMMARY: The United States Environmental Protection Agency (USEPA or Agency) is today proposing to grant an exemption from the ban on disposal of hazardous wastes through injection wells to Allied-Signal, Inc. (Allied), of Danville, Illinois. Allied may therefore continue to inject Resource Conservation and Recovery Act (RCRA) regulated hazardous waste, code D004 (arsenic), in Waste Disposal Well #1, if the exemption is granted. Allied submitted a petition to the USEPA under 40 CFR part 148, which allows any person to petition the Administrator to determine whether its continued injection of hazardous waste is protective of human health and the environment. After a comprehensive review, the USEPA has determined that there is a reasonable degree of certainty that Allied's injected waste will not migrate out of the injection zone over the next 10,000 years.

DATES: The USEPA is requesting public comments on today's proposed decision. Comments will be accepted until March 26, 1990. Comments postmarked after the close of the comment period will be stamped "Late". A public hearing will be scheduled for this proposed action and notice will be given in a local newspaper and to all people on a mailing list developed by the USEPA and the Illinois EPA. If you wish to be notified of the date and location of the public hearing, please contact the person listed below.

ADDRESS: Submit written comments, by mail to: United States Environmental Protection Agency (5WD–TUB–9), Underground Injection Control Section, 230 South Dearborn Street, Chicago, Illinois 60604. Attention: Edward P. Watters, Chief.

FOR FURTHER INFORMATION CONTACT: George Hudak, Lead Petition Reviewer, Water Division, Safe Drinking Water Branch, UIC Section, 230 S. Dearborn, Chicago, Illinois, 60604, Office Telephone Number: (312) 353–4142.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

The Hazardous and Solid Waste Amendments of 1984 (HSWA), enacted on November 8, 1984, impose substantial new responsibilities on those who handle hazardous waste. These amendments prohibit the continued land disposal of untreated hazardous waste beyond specified dates, unless the Administrator determines that the prohibition is not required in order to protect human health and the environment for as long as the waste remains hazardous (RCRA sections 3004 (d)(1), (e)(1), (f)(2), and (g)(5)). The statute specifically defined land disposal to include any placement of hazardous waste in an injection well (RCRA section 3004(k)). After the effective date of prohibition, hazardous waste can be injected only under two circumstances:

(1) When the waste has been treated in accordance with the requirements of 40 CFR part 268 pursuant to section 3004(m) of RCRA (the USEPA having adopted the same treatment standards for injected wastes in 40 CFR part 148, subpart B), or

(2) When the owner or operator of the injection well has demonstrated that there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. Applicants seeking exemption from the ban must demonstrate either:

(a) That the waste undergoes a chemical transformation so as to no longer pose a threat to human health and the environment, or

(b) That fluid flow is such that injected fluids would not migrate vertically out of the injection zone or to a point of discharge within a period of 10,000 years (40 CFR 148.20(a), 53 FR 28118 (July 26, 1988)).

The USEPA promulgated final regulations on July 26, 1988, (53 FR 28118) which govern the submission of petitions for exemption from the disposal prohibition (40 CFR part 148). A time frame of 10,000 years was specified for the demonstration, not because migration after that time is of no concern, but because a demonstration which can meet a 10,000 year time period, and also allow time for geochemical transformations which would render the waste nonhazardous or immobile. The Agency's standard thus does not imply that leakage will occur at some time after 10,000 years; rather, it is a showing that leakage will not occur within that time frame.

B. Facility Operation and Process

The Allied facility in Danville, Illinois, (See Figure 1), produces fluorocarbon refrigerant gases. Liquid wastes containing arsenic are produced as a result of this process. Allied has injected a total of approximately 399 million gallons of hazardous waste between 1973 and 1988; an average of about 25 million gallons per year.

C. Waste Minimization

Waste minimization through source reduction and recycling is emphasized by RCRA as a strategy for managing liquid waste. Allied has recently implemented two process changes which reduce waste. The levels of arsenic in the wastestream have decreased considerably over the past few years, as Allied now uses a distillation technology to reduce the concentration of arsenic in the raw materials used in refrigerant gas manufacture. Also, in 1988, Allied installed a neutralization system to neutralize the wastestream and render it nonhazardous with respect to corrosivity.

D. Submission

On February 25, 1988, Allied submitted a petition for exemption from the land disposal restrictions on hazardous waste injection under the Hazardous and Solid Waste Amendments of RCRA pursuant to the regulations set forth at 40 CFR part 148. This submission was reviewed for completeness and, in response to Agency comments, revised documents were received on September 6, 1989, November 20, 1989, December 14, 1989, and January 8, 1990. Several supplemental submissions were made thereafter to provide further clarification of minor issues. These submissions were reviewed by the USEPA, the Illinois EPA, and, in part, by the Illinois State Geological Survey and the Illinois State Water Survey as well as private consultants retained by the USEPA to assist in the determination.

II. Basis for Determination

A. Waste Description and Analysis

The wastes to be injected consist of neutralized hydrochloric acid vent scrubber discharge, boiler blowdowns, cooling tower blowdowns, dilute waste caustic from a scrubber, contaminated storm water, hydrofluoric vent scrubber discharge, water softening equipment discharge, and product hydrochloric acid. With an average arsenic concentration of 140 milligrams per liter (mg/l), the waste stream is characterized as hazardous pursuant to 40 CFR 261.24(b). The hazardous waste code for arsenic is D004.

B. Well Construction and Operation

The Allied injection well, WDW No. 1, was drilled and completed in October 1972. The well is constructed with four strings of cemented casing (see Figure 2) and injection takes place into the Potosi Formation through fiberglass tubing set at 3674 feet (ft.), The open annulus between the casing and the injection tubing is filled with kerosene oil and maintained at a pressure of approximately 225 pounds per square inch gauge (psig) at the surface.

The injection tubing is equipped with four electrodes and nine conductor cables which run to the surface to continually monitor the conductivity of the annular fluid near the bottom of the well. An increase in conductivity would result if there is leakage from the injection tubing or backflow of the injection fluid into the annulus.

C. Mechanical Integrity Test Information

The regulations at 40 CFR 148.20(a)(2)(iv) require the demonstration of the mechanical integrity of the injection well. The Allied injection well was tested in June and July of 1988. The test consisted of a cement bond log, a spinner survey, a radioactive tracer test, an annulus pressure test, casing inspection logs, a temperature log, and an oxygen activation log. Another mechanical integrity test was performed in March 1989, consisting of a pressure test and a radioactive tracer test. Results of these tests demonstrate that the well has mechanical integrity and that injected fluid is transmitted into the injection zone without leakage.

D. Site Description

1. Regional Geology

The Allied injection well is located in Vermilion County, near Danville, Illinois. It is situated in the northeastern portion of the Illinois Basin and is underlain by a sedimentary rock sequence approximately 7000 ft. thick consisting of carbonates, sandstones, siltstones, and shales. These units dip to the south at about 40 to 100 ft. per mile.

The lowermost underground source of drinking water (USDW), defined as water with less than 10,000 mg/1 total dissolved solids, extends to a depth of approximately 1700 ft. There is thus about 1700 ft. of separation between the top of the injection zone at 3400 ft., and the base of the lowermost USDW.

The Allied facility is located in a structurally inactive area where significant seismic risks are absent. Earthquakes that may cause damage in the future are most likely to be centered in seismically active areas to the south and southwest, namely, the New Madrid and Wabash Valley fault zones located in Arkansas, Tennessee, Kentucky, Missouri, southern Indiana, and southern Illinois. The most significant earthquakes centered in the New Madrid zone occurred in 1811 and 1812. Danville was estimated to be inside the VI–VII Modified Mercalli intensity isoseismal zone for those events. Should an earthquake of similar intensity occur near the Allied facility in the future, it would not be expected to cause structural damage to the injection well, or a release of waste from the injection zone. Seismic activity induced by the injection is also highly unlikely due to the extremely low pressure buildup and the absence of faults at the site.

2. Injection zone description

As shown in Figure 2, the injection zone at the Danville site consists of the Eminence and Potosi Formations, and part of the Franconia Formation. The Eminence Formation ranges in depth from 3332 ft. to 3510 ft. and consists of dolomite with small amounts of sandstone and chert and minor amounts of silty and sandy shale. The Potosi Formation ranges from 3510 ft. to 3870 ft. and is made up of fairly pure finely crystalline dolomite with minor interbeds of fine-grained sandstone and sandy shale. The Franconia Formation extends from 3870 ft. to 4080 ft. and consists of interbedded sandstone, shale, and dolomite. These rock units are porous and permeable enough to be suitable for waste disposal. The geochemical conditions were reviewed with respect to the compatibility of the waste stream with the injection formation.

The dilute acidic injected waste will dissolve some of the carbonate constituents in the injection zone, increasing their permeability (a measure of the ease with which fluid through the rock), and decreasing the amount of pressure buildup.

The borehole of WDW #1 is open from the bottom of the casing at 3613 ft. in the Potosi Formation to the top of the cement plug at about 4025 ft. in the Franconia Formation and all or much of this interval is likely to be actively accepting waste. Well logs indicate the increased presence of shales or other low permeability units in the upper portion of the Potosi Formation. Injectivity tests performed in 1989 indicate the presence of a compressible fluid layer, probably made up of

supercritical carbon dioxide that is prevented from migrating upward by one or more of these impermeable rock units. Injectivity tests also show that the injection interval, or the interval into which fluid is directly emplaced, has a permeability of between approximately 3 and 100 darcies, depending on the actual thickness of the interval receiving waste. For an assumed thickness of 200 ft., the permeability would be between 6 and 12 inches. The top of the injection interval is therefore designated to coincide with the bottom of the casing at 3613 ft. Log analysis of this interval indicated an average porosity of about 4 percent.

3. Confining Zone Description

There are a number of rock units between the lowermost USDW and the injection zone that act as effective confining zones. Several shale layers exist in the interval between 3275 ft. and 3400 ft. that will act to prevent vertical fluid movement, and well logs indicate that the massive dolomites in the Prairie du Chien Group from 2700 ft. to 3275 ft. can act as an effective confining zone. Also, an analysis of well cuttings indicates that there are at least 8 individual shaley units between 1935 ft. and 2750 ft. These units are between 10 ft. and 85 ft. thick each, with an aggregate thickness of about 250 ft.

The Maquoketa Formation, a shale unit 275 ft. thick which lies directly beneath the lowermost USDW and has a measured permeability of approximately 10^{-6} darcies, acts as another major hydraulic barrier to fluid flow. Additional data from the Danville area indicate that there is a natural hydraulic gradient from the St. Peter Formation at about 2600 ft. to the Ironton-Galesville Formation at about 4200 ft. There is thus the potential for downward flow between these to formations at the Danville site which further prevents the injected waste from migrating upward to contaminate USDWs.

4. Area of Review

The area of review for Class I hazardous waste injection wells is a 2-mile radius around the well bore, unless a larger area is required based on the calculated cone of influence. The cone of influence at the Danville site has been calculated to be between 10 and 20 ft. Thus, the area of review has been designated to be 2 miles. Allied has performed a well search within a 5-mile radius of the injection well, and found that there are no wells that penetrate the confining zone within this area. Therefore, under 40 CFR part 146, no corrective action is needed at this facility.

E. Model Demonstration of No Migration

The demonstration of no migration of hazardous constituents from the injection zone at the Allied facility involves the use of a predictive model developed by the DuPont Company. The DuPont model consists of four submodels: The Basic Plume Model, the Multilayer Pressure Model, the Multilayer Vertical Permeation Model, and the Molecular Diffusion Model. This family of models was used to predict the buildup of pressure and the lateral and vertical flow of waste from the injection well. DuPont has demonstrated that the computer programs used to solve the model equations have been verified against a variety of analytic and numerical solutions in the literature.

1. Model Development and Calibration

The Allied-Signal model was developed by incorporating the hydrogeological data of the site and surrounding vicinity into the conceptual model. These values were derived from well logs, cores, published literature, and local off-site geological data. The model contains ten stratigraphic layers extending from the top of the Maquoketa Formation to the base of the Potosi Formation. The input parameters were calibrated by comparing the modeled bottom hole shut-in pressure buildup with the measured bottom hole pressure buildup recorded during the injectivity tests performed in 1989.

2. Model Predictions

Three simulation time periods were considered in the demonstration: The historical injection period from 1972 through 1988, a 15-year operational period, and a 10,000 year post-operational period. For the historical period and the operational period, pressure buildup due to injection and the lateral and vertical migration were modeled. For the post-operational period, additional lateral migration due to the natural flow gradient and additional vertical migration due to molecular diffusion were modeled. Modeling results, and the parameter choices which ensure that these results represent reasonably conservative conditions, are presented below.

a. *Lateral migration.* Lateral migration of the waste plume was modeled for three periods of time: past injection through 1988, future injection through 2003, and natural flow, after the cessation of injection, for 10,000 years. The model was constructed conservatively, using an injection interval thickness of 40 ft. and a porosity of 4 percent. A multiplying factor of 3.0 was also used in this model to compensate for the effects of dispersion associated with nonuniformities in the injection interval. The multiplying factor is set equal to the ratio of the maximum horizontal permeability averaged over the formation thickness. It provides a margin of safety in the calculations, since it discounts the mitigating influence of both small scale transverse dispersion and slow vertical flow, each of which acts to retard the lateral transport. An injection rate of 125 gallons per minute was used for all calculations except for past injection, where the actual injection rate of 53 gallons per minute was used. Thus, since there is not expected to be a significant change in the injection rate in the future, this model will over-predict the extent of the lateral migration.

Results of the modeling show that the waste plume has a radius of 1.07 miles at the end of 1988, and 1.99 miles after an additional 15 years of injection. Due to the low specific gravity of the injected fluid, the waste has been calculated to move up dip about 0.65 miles in 10,000 years. Studies performed by Allied indicate that the natural groundwater flow in the injection zone near the Danville site is no greater than 4 inches per year. This would result in the additional movement of 0.63 miles in 10,000 years. For a worst-case scenario, assuming that these two forces act in the same direction results in an additional 1.28 miles of movement, for a total lateral migration distance of 3.27 miles. Based on injectivity tests and logs, more realistic values for the injection interval thickness (a few hundred feet), porosity (greater than 4 percent), and injection rate (50 gpm), would result in a considerably smaller plume radius.

b. *Pressure buildup.* Pressure buildup in the injection zone was modeled over two periods of time: (1) past injection through 1988, and (2) future injection through 2003. Actual injection rates were used to model injection through 1988, and a conservative injection rate of 125 gpm was used to model the time period through 2003.

This model was constructed using an injection interval thickness of 200 ft. with a permeability of 5.0 darcies. Injectivity tests performed in 1989 show that the actual permeability-thickness product is greater than that used here, and thus this model will over-predict the pressure generated by injection operations. The Potosi caprock was assigned a vertical permeability of 0.1 darcies, and the Eminence Formation shales a vertical permeability of 5×10^{-4} darcies. A constant head boundary was set at the base of the lowermost USDW.

The modeling shows that at the end of 1988, the pressure increase at the wellbore where the buildup is at its maximum amounts to 1.1 psi. After an additional 15 years of injection, in 2003, the pressure increase at the wellbore is 3.5 psi. This pressure buildup is so small that it is not affected by the permeability of the Potosi caprock and the Eminence shales.

c. *Vertical permeation.* The driving force for vertical permeation of fluids into the overlying strata is provided by the elevated pressure in the injection interval and by molecular diffusion. Permeation will be greatest immediately adjacent to the wellbore where the pressure buildup is largest. The vertical permeation model performs separate calculations for each of two key time scales for permeation. A short term submodel considers the injection process and the post-closure period immediately following it. A long term submodel calculates the residual permeation distance for 10,000 years after injection operations have been discontinued.

The pressure increase that is predicted by the previously described pressure model is used as a basis for calculating vertical permeation, and the same parameter values for the rock properties were also used. The results of the short-term submodel show that, by 2003, the waste has moved 125 ft. above the top of the injection interval. Because of the low compressibility of the Eminence and Potosi dolomites, the upward permeation predicted by the short term model is considered to be the same as would be predicted by the long term model.

After injection has been discontinued, molecular diffusion becomes the primary mechanism driving vertical migration. To define the edge of the waste plume, the amount of dilution necessary to reduce the maximum concentration of arsenic permitted in the wastestream to the health-based limit was determined. A "concentration reduction factor" (CRF) was calculated by dividing the health-based limit for arsenic (.05 mg/l) by the maximum concentration of arsenic permitted in the waste stream (500 mg/l). This results in a CRF of 1×10^{-4}. Using the geologic literature to establish a conservative value for the effective diffusion coefficient of 8×10^{-7} centimeters squared per second, vertical movement due to molecular diffusion is calculated to be 91 ft. for the 10,000 year post-operational period. Total vertical movement is thus 216 ft. above the top of the injection interval at 3,613 ft., and the waste will be contained within the upper part of the Eminence Formation.

D. Synopsis

The results of the modeling effort presented above demonstrate, to a reasonable degree of certainty, that the hazardous constituents injected at the Danville site will not migrate vertically out of the injection zone nor laterally to a point of discharge, within a 10,000 year period.83E. Quality Assurance and Quality Control

Allied and its consultants have shown that adequate quality assurance and quality control plans were followed in demonstrating that the injected waste will not migrate out of the injection zone within 10,000 years. Allied has followed appropriate protocol in locating records of penetrations in the area of review, for collection and analysis of geologic data, for waste characterization, and for all tasks associated with the modeling demonstration.

III. Conditions of Petition Approval

Conditions relating to the exemption may be found in 40 CFR Parts 148.23 and 148.24. The existing permit for this facility, issued by the Illinois EPA, is consistent with the petition and no other permit conditions are necessary at this time.

Dated: February 6, 1990.

Charles H. Sutfin,

Director, Water Division, Region V, United States Environmental Protection Agency.

BILLING CODE 6560-50-M

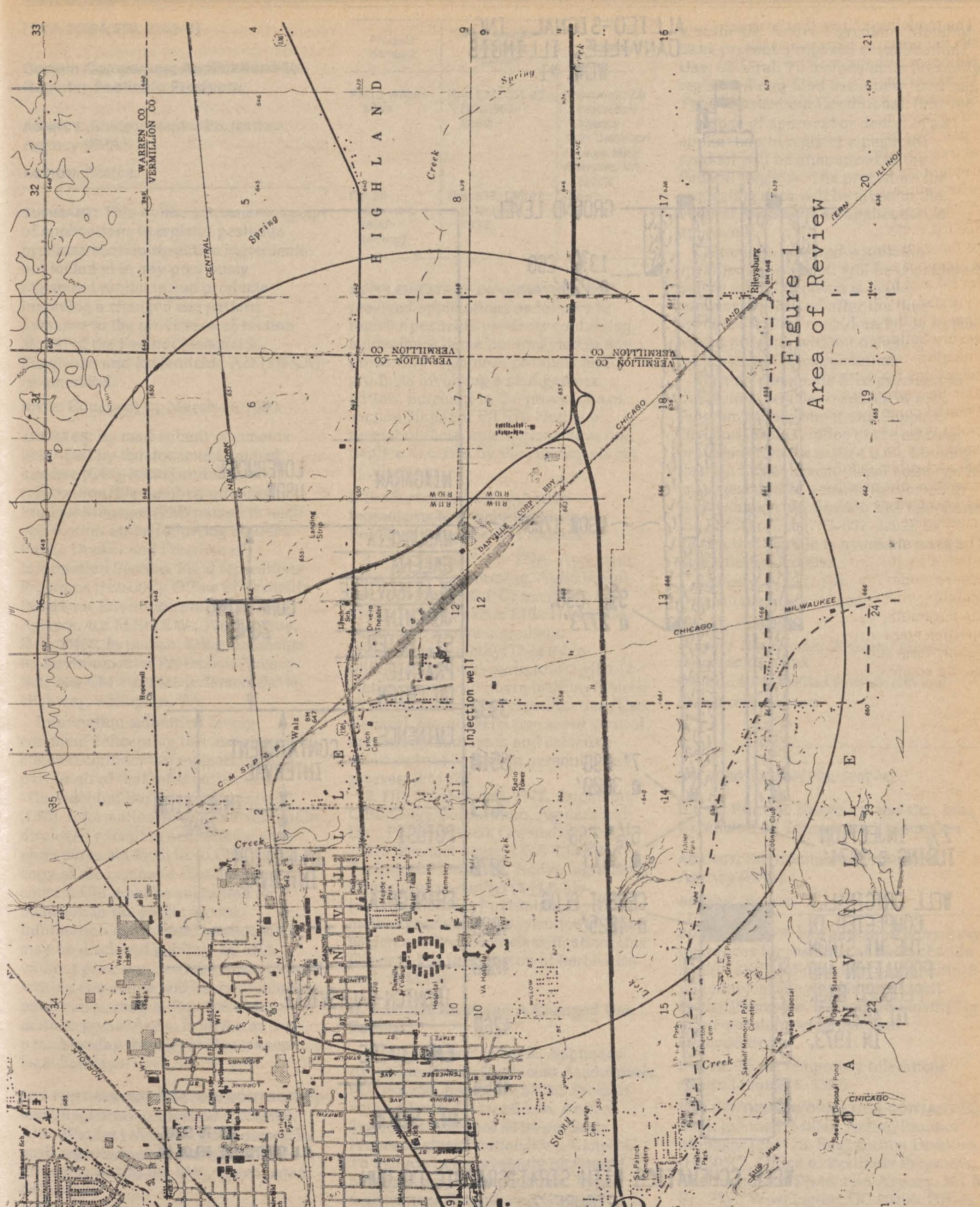
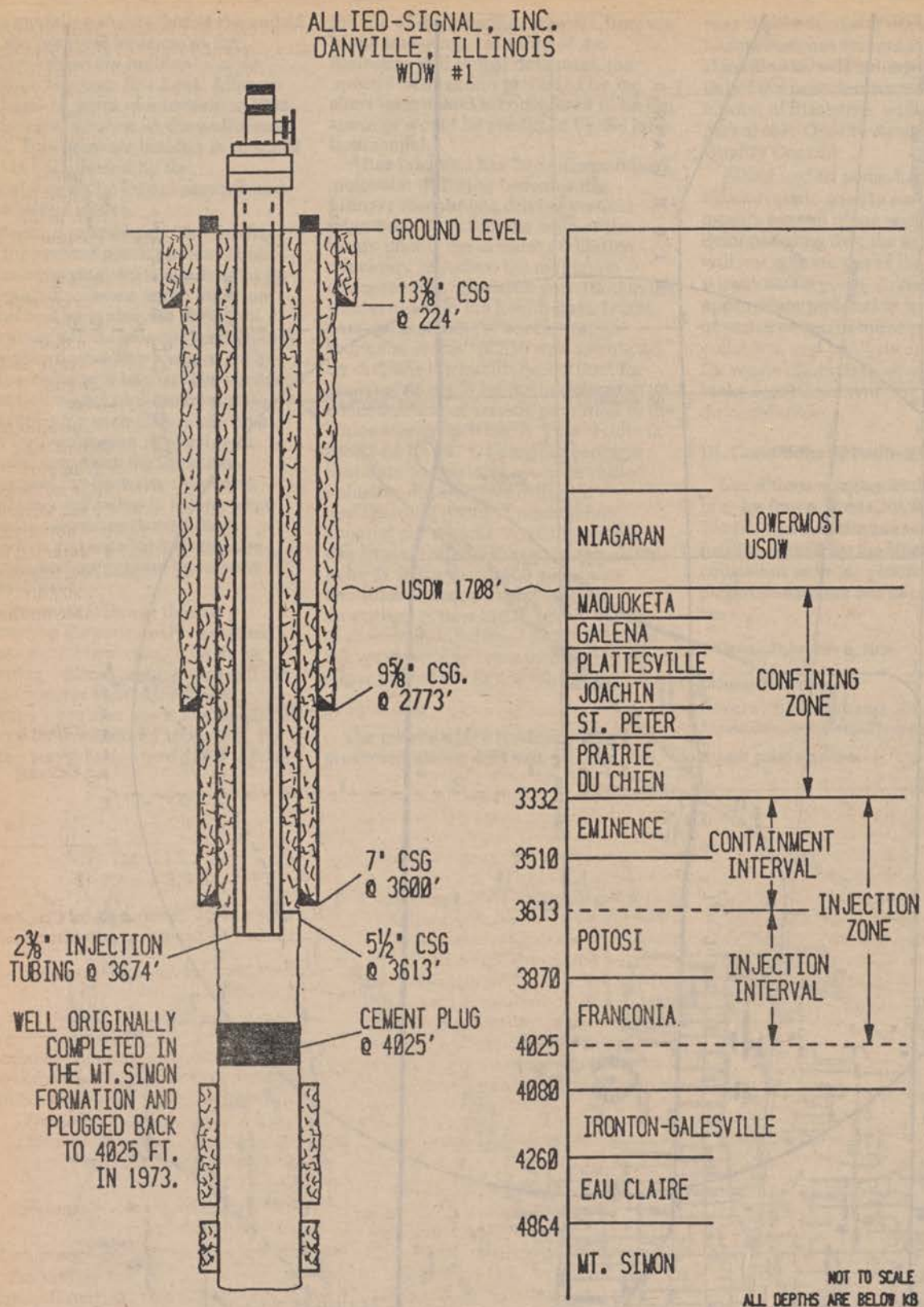


Figure 1
Area of Review



WELL SCHEMATICS WITH STRATIGRAPHIC COLUMN
FIGURE 2

[FR Doc. 90-3470 Filed 2-13-90; 8:45 am]
BILLING CODE 6560-50-C

[OPP-30294; FRL 3708-6]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by March 16, 1990.

ADDRESS: By mail submit comments identified by the document control number [OPP-30294] and the registration/file number, attention Product Manager (PM) named in each application at the following address: Public Docket and Freedom of Information Section, Field Operations Programs (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Environmental Protection Agency, Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product Manager	Office location/ telephone number	Address
PM16 William Miller	Rm. 211, CM #2 (703-557-2600).	Environmental Protection Agency 1921 Jefferson Davis Hwy Arlington, VA 22202
PM 23 Joanne L. Miller (Acting)	Rm. 237, CM #2 (703-557-1830).	-Do-

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 100-TNA. Applicant: Ciba-Geigy Corporation, Agricultural Div., PO Box 18300, Greensboro, NC 27419. Product name: Rifle Herbicide. Herbicide. Active ingredient: Primisulfuron-methyl (3-[4,6-bis-(difluoromethoxy)-pyrimidin-2-yl] 1-(2-methoxycarbonyl-phenylsulfonyl)) urea 75 percent. Proposed classification/Use: General. For nonselective weed control in noncropland areas and selective weed control in certain perennial turf grasses. (PM 23)

2. File Symbol: 100-TNT. Applicant: Ciba-Geigy Corporation, Agricultural Div., PO Box 18300, Greensboro, NC 27419. Product name: CGA-136872 Technical. Herbicide. Active ingredient: Primisulfuron-methyl (3-[4,6-bis-(difluoromethoxy)-pyrimidin-2-yl] 1-(2-methoxycarbonyl-phenylsulfonyl)) urea 95 percent. Proposed classification/Use: General. For formulation of herbicides only. (PM 23)

II. Products Involving A Changed Use Pattern

1. File Symbol: 61260-R. Applicant: American Honey Producers Association, PO Box 368, Bruce, SD 57220. Product name: Menthol. Insecticide. Active ingredient: Menthol 99.94 percent. Proposed classification/Use: General. To include in its presently registered non-food use a new food use. Type registration: Conditional. (PM 16)

2. File Symbol: 61260-E. Applicant: American Honey Producers Association. Product name: Menthol (Bulk). Insecticide. Active ingredient: Menthol 99.94 percent. Proposed classification/Use: General. To include in its presently registered non-food use a new food use. Type registration: Conditional. (PM 16)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: December 13, 1989

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-3248 Filed 2-13-90; 8:45 am]

BILLING CODE 6560-50-D

[PP 8G3638/T587; FRL 3707-1]

E.I. du Pont de Nemours and Co., Inc.; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for residues of the herbicide methyl 2[[[[[(4,6-dimethoxy-pyrimidin-2-yl)amino]carbonyl]amino]sulfonyl] methyl]benzoate, bensulfuron methyl in or on certain raw agricultural commodities.

DATES: These temporary tolerances expire January 6, 1991.

FOR FURTHER INFORMATION CONTACT By mail: Joanne I. Miller, Acting Product Manager (PM) 23, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM No.2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-1830.

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the **Federal Register** of March 1, 1989 (54 FR 8596), announcing the establishment of temporary tolerances for residues of the herbicide methyl 2[[[[[(4,6-dimethoxypyrimidin-2-yl)amino]carbonyl]amino]sulfonyl] methyl]benzoate, bensulfuron methyl in or on the raw agricultural commodities fish at 0.3 part per million (ppm) and water (potable) at 0.1 ppm. These tolerances were issued in response to pesticide petition (PP) 8G3638, submitted by E.I. du Pont de Nemours and Co., Inc., Agricultural Products Dept., Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19898.

These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit 352–EUP–146, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active herbicide to be used must not exceed the quantity authorized by the experimental use permit.

2. E.I. du Pont de Nemours and Co., Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire January 6, 1991. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: January 31, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90–3464 Filed 2–13–90; 8:45 am]

BILLING CODE 6560–50–D

[OPP–180826; FRL–3711–4]

Receipt of Application for Emergency Exemption To Use Fenpropathrin; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a request for an emergency exemption from the Arizona Office of the State Chemist (hereafter referred to as the "Applicant") to use the active ingredient fenpropathrin (Danitol) to control citrus thrips (*Scirtothrips citri*) on 30,000 acres of citrus in Yuma County, Pinal County, and the portion of Maricopa County south of Baseline Road.

Danitol contains an unregistered active ingredient and, therefore, in accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before March 1, 1990.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP–180826," should be submitted by mail to:

Public Docket and Freedom of Information Section, Field Operations Division (H–7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Jim Tompkins, Registration Division (H–7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Cyrstal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of an unregistered chemical, fenpropathrin (CAS 39515–41–8), manufactured as Danitol, by Valent U.S.A. Corporation, to control citrus thrips on 30,000 acres of citrus. Information in accordance with 40 CFR part 166 was submitted as part of this request. The Applicant indicates that over the last few years many growers have experienced increasing difficulty in controlling citrus thrips and have suffered significant economic losses. An emergency situation has been created primarily by the development of resistance in the thrips population to dimethoate and formetanate hydrochloride which previously were effective in controlling citrus thrips. Avermectin has become available and is the only registered material to which trips lack resistance. Citrus growers fear that if avermectin is used alone, avermectin will soon become as ineffective as the older compounds. The other available insecticides have little

effectiveness against the thrips, and generally cause more acute side effects on beneficial organisms than do dimethoate and formetanate hydrochloride. The Applicant is requesting the use of fenpropathrin to provide a different mode of action from avermectin, dimethoate and formetanate hydrochloride, which can be used in rotation to preserve their efficacy.

In addition to the resistance problem, there has been a persistent problem with bee kills associated with the production of citrus. The bee kill problem arises from the fact that fields of vegetables being grown for seed are intermingled with the citrus orchards. These vegetable seed crops require bees for pollination at the same time that the citrus are in bloom. Citrus bloom is highly attractive to bees and has created a hazardous situation for bees in the area. The Applicant submitted data showing that limiting applications of fenpropathrin to citrus to the slot from one hour after sunset to three hours before sunrise will reduce bee mortality to a minimum.

Danitol will be applied by ground at a maximum rate of 16 fluid ounces of product (0.3 pounds active ingredient) per acre. A maximum of two applications, a minimum of 10-days apart, may be made per growing season. A 14-day preharvest interval will be observed.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for the opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Arizona State Chemist.

Dated: February 5, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-3466 Filed 2-13-90; 8:45 am]

BILLING CODE 6560-60-M

[OPP-180825; FRL 3711-2]

Wisconsin Department of Agriculture, Trade, and Consumer Protection Receipt of Application for an Emergency Exemption To Use Mancozeb; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Wisconsin Department of Agriculture, Trade and Consumer Protection (hereafter referred to as "Applicant") to use the fungicide mancozeb to treat 1,500 acres of cultivated American ginseng (*Panax quinquefolium* L.) to control foliar infection by *Phytophthora cactorum* and leaf and stem blight caused by *Alternaria panax*. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and solicit public comment before making the decision whether to grant the exemption.

DATES: Comments should be received on or before March 1, 1990.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180825," should be submitted by mail to:

Public Docket and Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information". Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this noticed will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Robert Forrest, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit use of the fungicide mancozeb (CAS 8018-01-7) available as Dithane M-45, EPA Reg. No. 707-78. Information in accordance with 40 CFR part 166 was submitted as part of this request. The Applicant was granted emergency exemptions for use of Dithane M-22 (maneb) on ginseng to control *Alternaria* in 1984 and 1985, but not in 1986. An emergency exemption for use of iprodione on ginseng to control *Alternaria* was granted in 1986. The Applicant indicates that a population of *Alternaria*, located in the ginseng growing area in Wisconsin, developed resistance to iprodione. In addition, an epidemic of *Phytophthora* foliar infection occurred in 1986, despite the use of iprodione. The Applicant was granted emergency exemptions for use of Dithane M-45 (mancozeb) on ginseng to control *Phytophthora* and iprodione resistant *Alternaria* in 1987, 1988 and 1989. According to the Applicant, without effective control, ginseng growers could experience a 25 to 50 percent crop loss due to *Phytophthora* leaf blight and root rot, and a 50 to 100 percent crop loss if *Alternaria* can not be effectively managed.

Dithane M-45 will be applied at weekly intervals by ground application equipment at a rate of 1.6 pounds active ingredient (2 pounds) per acre during the growing season (late May through September). Dithane M-45 will be applied only during the first three growing seasons. No applications are to be made within one-year of harvest.

A Decision Document (EBDC Pesticides; Initiation of Special Review) for the ethylene bisdithiocarbamate fungicides (EBDC's), which includes mancozeb, was issued July 17, 1987 (52 FR 27172). The Agency initiated this action based on an assessment of the risks from exposure to ethylenethiourea

(ETU) present in, or formed as a result of metabolic conversion from pesticide products containing the active ingredient mancozeb. ETU, a potential human carcinogen, teratogen, and thyroid toxicant, is present as a contaminant, degradation product, and metabolite of all the EBDC pesticides. The Agency, therefore, believed that the level of potential risk from mancozeb products, coupled with the presence of and conversion to ETU in all other EBDC pesticide products, warrants an assessment of the risks and benefits of all EBDC pesticides as a group. On December 20, 1989, the Agency announced its preliminary determination regarding the continued registration of pesticide products containing EBDCs. The Agency reviewed the registered EBDC fungicides, including mancozeb, and concluded that the risk from continued use of the EDBCs outweigh the benefits. Accordingly, the Agency is proposing to cancel many of the uses of the existing EBDCs. Risks result from exposure to ETU. The EBDCs pose carcinogenic risks to consumers from dietary exposure and risks of carcinogenic, developmental and thyroid effects to mixers, loaders, and applicators of these pesticides.

The Registration Standard for mancozeb was issued April 1987. The Registration Standard outlines data to be required by the Agency.

This notice does not constitute a decision by EPA on this application. The regulations governing section 18 require publication of a notice in the Federal Register of receipt of an application for a specific exemption proposing use of a pesticide which contains an active ingredient which has been the subject of a Special Review and is intended for a use that could pose a risk similar to the risk posed by any use of a pesticide which is or has been the subject of a Special Review (40 CFR 166.24(a)(5)). Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address given above. The Agency will review and consider all comments received during the comment period in determining whether to issue this emergency exemption request.

Dated: January 31, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-3467 Filed 2-13-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[DA 90-175]

Advisory Committee on Advance Television Service; Meeting

February 8, 1990.

The ninth meeting of the Systems Subcommittee of the Advisory Committee on Advanced Television Service will be held at 10 a.m. on February 27, 1990, in room 856 at the FCC's offices at 1919 M Street NW., in Washington, DC.

The agenda for the meeting will consist of:

1. Introductory remarks.
2. Approval of agenda.
3. Approval of minutes from 11/28/89 meeting.
4. Discussion of 3rd Interim Report.
5. Discussion of Advisory Committee Meeting on 3/21/90.
6. Report by Working Party 1 (Systems Analysis).
7. Report by Working Party 2 (System Evaluation and Testing).
   A. Status of System Certification.
8. Report by Working Party 3 (Economic Assessment).
9. Report by Working Party 4 (System Standard).
10. Open discussion.
11. Next meeting.

All interested parties are invited to attend. Those interested may also submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Committee Chairman.

Any questions regarding this meeting should be directed to Bruce Franca at (202) 632-7060.

Federal Communications Comission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-3407 Filed 2-13-90; 8:45 am]

BILLING CODE 6712-01-M

[DA 90-179]

Advisory Committee and Advanced Television Service

February 8, 1990.

A meeting of the Advisory Committee on Advanced Television Service will be held on: March 21, 1990, 2 p.m., Commission Meeting Room (Room 856), 1919 M Street NW., Washington, DC.

The agenda for the meeting will consist of:

1. Introduction.
2. Approval of Minutes of the Last Meeting.
3. Remarks by FCC Chairman Alfred Sikes.
4. Reports of the Subcommittees.
5. Report of Testing Laboratories.
6. Draft of Third Interim Report.
7. Testing Schedule.
8. Discussion of Aspect Ratio.
9. Financial Report.
10. Future Work Plans.
11. Other Business.
12. Adjournment.

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the director of the Advisory Committee Chairman.

Any questions regarding this meeting should be directed to Richard E. Wiley at (202) 429-7010 or William Hassinger at (202) 632-6460.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-3408 Filed 2-13-90; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1806]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

February 8, 1990.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC., or may be purchased from the Commission's copy contractor International Transcription Service (202-857-3800). Oppositions to these petitions must be filed.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Petition to Amend the Radio Control (R/C) Radio Service Rules to Permit Model Surface Craft Channels to be Used for Remote Control of Industrial Cranes. (RM-6665) Number of petitions filed: 1.

Subject: Amendment of § 73.202(b) Table of Allotments FM Broadcast Stations. (Vacaville and Middleton, California) (MM Docket No. 88-491, RM-6371 and 6650) Number of petitions filed: 1.

Subject: Amendment of part 90 of the Commission's Rules to Implement a Conditional Authorization Procedure

for Proposed Private Land Mobile Radio Service Stations. (PR Docket No. 88–567) Number of petitions filed: 4.

Subject: Amendment of § 73.202(b) Table of Allotments FM Broadcast Stations (Dickson, Tennessee; Benton, Clavert City, Kentucky). (MM Docket No. 88–613, RM–6483 and 6712). Number of petitions filed: 1.

Subject: Amendment of § 73.202(b) Table of Allotments FM Broadcast Stations (Quincy, Shingle Springs and Sutter Creek, California). (MM Docket No. 89–62, MR–6522). Number of petitions filed: 3.

Subject: Amendment of § 73.606(b) Table of Allotments, TV Broadcast Stations. (Clermont and Cocoa, Florida). (MM Docket No. 89–68 RM–6382). Number of petitions filed: 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–3409 Filed 2–13–90; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–854–DR]

Commonwealth of the Northern Mariana Islands; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of the Northern Mariana Islands (FEMA–854–DR), dated February 5, 1990, and related determinations.

DATED: February 5, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472; (202) 646–3614.

NOTICE: Notice is hereby given that, in a letter dated February 5, 1990, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288, as amended by Pub. L. 100–707), as follows:

I have determined that the damage in certain areas of the Commonwealth of the Northern Mariana Islands, resulting from Typhoon Koryn on January 15–16, 1990, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93–288, as amended by Public Law 100–707. I, therefore, declare that such a major disaster exists in the Commonwealth of the Northern Mariana Islands.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Public Law 93–288, as amended by Public Law 100–707, for Public Assistance will be cost shared. The final terms of this cost sharing arrangement can include per capita cost sharing.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Warren M. Pugh of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of the Northern Mariana Islands to have been affected adversely by this declared major disaster: The islands of Rota, Saipan, and Tinian for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 90–3458 Filed 2–13–90; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

[Docket No. 90–05]

Safbank Line Limited v. Royale International Transport, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Safbank Line Limited ("Safbank") against Royale International Transport, Inc. ("Royale") was served February 8, 1990. Safbank alleges that Royale has violated section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by failing to remit the ocean freight and terminal handling charges due and payable on a shipment of used household goods between New York, New York, and Durban, South Africa.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by February 8, 1991, and the final decision of the Commission shall be issued by June 10, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 90–3417 Filed 2–13–90; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Announcement 016]

Public Health Conference Support Grant Program

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR), announces the availability of funds in Fiscal Year 1990 for the Public Health Conference Support Grant Program.

Authority

This program is authorized under sections 104(i) (14) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended.

Eligible Applicants

Eligible applicants are states, and political subdivisions thereof, which may include state universities, state colleges, state research institutions, state hospitals and state and local health departments.

Availability of Funds

Approximately $75,000 will be available in Fiscal Year 1990 to fund approximately ten awards. It is expected that the average award will be $7,500 ranging from $5,000 to $10,000. It is expected that the awards will begin

on or about September 1, 1990, and will be made for a 12-month budget and project period. Funding estimates may vary and are subject to change.

1. Grant funds may be used for direct cost expenditures: salaries, speaker fees, rental of necessary equipment, registration fees, transportation costs (not to exceed economy class fare) and travel of non-Federal employees.

2. Grant funds may *not* be used for the purchase of equipment, payments of honoraria, alterations or renovations, indirect costs, organizational dues, entertainment/personal expenses, cost of travel and payment of a full-time Federal employee, or to pay per diem or expenses other than local mileage for local participants.

Although the practice of handing out novelty items at meetings is often employed in the private sector participants with souvenirs, Federal funds cannot be used for this purpose.

Purpose

This program will provide *partial* support for non-Federal conferences on disease prevention, health promotion and information/education projects. Applications are being solicited for conferences on: (1) Health effects of toxic substances; (2) disease and exposure registries; (3) hazardous substance removal and remediation; (4) emergency response to toxic and environmental disasters; (5) risk communication; (6) disease surveillance; and (7) investigation and research.

Evaluation Criteria

An ATSDR-convened committee will conduct a review of the applications. Applications for support of the types of conferences listed in the Purpose section of this announcement will be evaluated and ranked for funding. The major factors to be considered in the evaluation of responsive applications will include:

1. *Proposed Program* (50%)

The description of (a) the public health significance of the proposed conference including the degree to which the conference can be expected to influence public health practices; (b) the feasibility of the conference in terms of an operational plan; (c) clearly stated conference objectives and the potential for accomplishing those objectives; and (d) the method of evaluating the conference.

2. *Program Personnel* (30%)

The extent to which the proposal has described (a) the qualifications, experience, and commitment of the principal staff person, and his/her ability to devote adequate time and effort to provide effective leadership, and (b) the competence of associate staff persons, discussion leaders, speakers and presenters to accomplish the proposed conference

3. *Applicant Capability* (20%)

The description of (a) the adequacy and commitment of institutional resources to administer the program, and (b) the adequacy of the facilities to be used for the conference.

4. *Program Budget* (Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of grant funds.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs (45 CFR part 100).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 13.161.

Application Submission and Deadline

The original and two copies of the Application Form 5161–1 shall be submitted in accordance with the schedule below. The schedule also sets forth the *anticipated* award date:
Application Deadline: June 1
Anticipated Award Date: September 1

Applications must be submitted on or before the deadline date to:

Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the review committee. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications and will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures and an application package may be obtained from Ms. Carole J. Tully, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842–6630 or FTS 236–6630.

Technical assistance may be obtained from Mr. J. Michael Griffith, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E28, Atlanta, Georgia 30333, (404) 639–0708 or FTS 236–0708.

Please refer to Announcement Number 016 when requesting information and submitting any application on the Request for Assistance.

Dated: February 8, 1990.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 90–3480 Filed 2–13–90; 8:45 am]

BILLING CODE 4160–70–M

Centers for Disease Control

Establishment; Advisory Committee to the Director, Center of Disease Control

ACTION: Notice of Establishment—Advisory Committee to the Director, Centers for Disease Control.

Pursuant to Federal Advisory Committee Act, 5 U.S.C. appendix 2, the Centers for Disease Control (CDC) announces the establishment by the Secretary of Health and Human Services of the following Federal advisory committee:

Designation: Advisory Committee to the Director, CDC.

Purpose: This committee will provide advice and guidance to the Director, CDC, on policy matters pertinent to CDC responsibilities in the development and application of prevention and control measures for disease, injury, and disability; environmental health activities; and health promotion and health education programs. The Committee will make recommendations concerning program content and emphasis and other specific or general aspects of CDC policy.

Authority for this committee will expire February 1, 1992, unless the Secretary of Health and Human Services, with the concurrence of the Committee Management Secretariat, General Services Administration, formally determines that continuance is in the public interest.

Dated: February 8, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90-3475 Filed 2-13-90; 8:45 am]

BILLING CODE 4160-18-M

Advisory Committee for Injury Prevention and Control, Centers for Disease Control (CDC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), CDC announces the following committee meeting:

Name: Advisory Committee for Injury Prevention and Control.

Time and Date: 8:30 a.m.-5 p.m., March 5, 1990; 8:30 a.m.-12 noon, March 6, 1990.

Place: Hotel Washington, 515 15th & Pennsylvania Avenue, Washington, DC 20004.

Status: Open to the public, limited only by the space available.

Purpose: The Committee will continue to make recommendations on policy, strategy, objectives, and priorities including the balance and mix of intramural and extramural research; advise on the development of a national plan for injury prevention and control and the development of new technologies and their application; and review progress toward injury prevention and control.

Matters to be Discussed: The Committee will discuss priority setting, interagency coordination, intramural and extramural programs, and map out its agenda for future meetings.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Mark Rosenberg, M.D. Director, Division of Injury Epidemiology and Control, Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road, NE., Mailstop F-36, Atlanta, Georgia 30333, telephone: FTS: 236-4690; Commercial: (404) 488-4690.

Dated: February 18, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 90-3476 Filed 2-13-90; 8:45 am]

BILLING CODE 4160-18-M

National Institute for Occupational Safety and Health (NIOSH) Pneumoconiosis X-Ray Interpretation Using Computed Image

Modification: Meeting.

Name: Pneumoconiosis X-Ray Interpretation Using Computed Image Modification.

Time and Date: 1 p.m.—3 p.m., March 9, 1990.

Place: Appalachian Laboratory for Occupational Safety and Health, NIOSH, Centers for Disease Control (CDC), Room 203, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888.

Status: Open to the public, limited only by the space available.

Purpose: To review the project entitled, "Pneumoconiosis X-Ray Interpretation Using Computed Image Modification".

Contact Person for More Information: Additional information and copies of the research protocol may be obtained from Thomas K. Hodous, M.D., NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888, Telephone: Commercial (304) 291-4301, FTS: 923-4301. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Dated: February 8, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 90-3477 Filed 2-13-90; 8:45 am]

BILLING CODE 4160-19-M

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceeding brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place NW., Washington, DC 20005, (202) 633-7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, Parklawn Building, 5600 Fishers Lane, Room 7-90, Rockville, MD 20857, (301) 44-6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each preceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters to take evidence, conduct hearings as appropriate, and to submit to the Court findings of fact and conclusions of law.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine adminstration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by PHS from December 9, 1989, through January 23, 1990. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "sustained, or had significantly agravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Acting Director, Bureau of Health Professions, 5600 Fishers Lane, room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name V. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for puposes of carrying out the Program.

List of Petitions

1. Jeffrey Pease, Seattle, Washington, Claims Court Number 89–123 V
2. Robert and Denise Sorensen on behalf of Jonathon Sorenson, Bryan, Texas, Claims Court Number 89–124 V
3. Jeanne Bedell on behalf of Brooke Bolander, Atlanta, Georgia, Claims Court Number 89–125 V
4. Joy Cohen on behalf of Tiffany Peterson, Boise, Idaho, Claims Court Number 90–01 V
5. Oneita and Walter Potter on behalf of Carrie Potter, Estes Park, Colorado, Claims Court Number 90–02 V
6. Ed and Sue Trigg on behalf of Erin Trigg, Jackson, Wyoming, Claims Court Number 90–03 V
7. Celina Lopez on behalf of Lorraine Lopez, Pueblo, Colorado, Claims Court Number 90–12 V
8. Debbie Hale on behalf of Christopher Hale, Dublin, Texas, Claims Court Number 90–13 V
9. Michael Hazelbaker, Scioto County, Ohio, Claims Court Number 90–14 V
10. Edwina Lee on behalf of Wynnie Lee, Deceased, Honolulu, Hawaii, Claims Court Number 90–15 V
11. Mary Lou Robideau on behalf of Cynthia Robideau, Tupper Lake, New York, Claims Court Number 89–16 V
12. Ronald Mobley on behalf of Joshua Mobley, Tampa, Florida, Claims Court Number 90–17 V
13. Keith Ori on behalf of Marissa Ori, Missoula, Montana, Claims Court Number 90–21 V
14. Debra Thelen on behalf of Nichole Thelen, Twin Falls, Idaho, Claims Court Number 90–22 V
15. Martha Fricano, Baldwinsville, New York, Claims Court Number 90–23 V
16. Judy Davidson on behalf of Barry Davidson, Merriam, Kansas, Claims Court Number 90–24 V
17. Mary Knox on behalf of Kenneth Knox, Ft. Collins, Colorado, Claims Court Number 90–33 V
18. George and Dorothy Foegen on behalf of John Foegen, Tacoma, Washington, Claims Court Number 90–40 V
19. Jane Marie Schwenk, Jasper, Indiana, Claims Court Number 90–44 V
20. Kimberly Clark on behalf of Ariel Clark, Siloam Springs, Arkansas, Claims Court Number 90–45 V
21. Sheryl Rogers on behalf of Jeanne Rogers, Columbia, South Carolina, Claims Court Number 90–46 V
22. Beverly Miller on behalf of Alison Miller, San Jose, California, Claims Court Number 90–50 V
23. Salvador Ybarra on behalf of Crystal Ybarra, Tahoka, Texas, Claims Court Number 90–54 V.

Dated: February 8, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 89–3405 Filed 2–13–90; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Education Review Committee, National Cancer Institute, on February 27, 1990, Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.

The meeting will be open to the public on February 27, from 8:30 a.m. to 9 a.m., to review administrative details and other cancer education review issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on February 27 from approximately 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Mary Bell, Executive Secretary, Cancer Education Review Committee, National Cancer Institute, Westwood Building, room 832, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7978) will furnish substantive program information.

Dated: February 8, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–3492 Filed 2–13–90; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–90–3017]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number, Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) The description of the

need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondent, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 6, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Request for Final Endorsement of Credit Instrument.
Office: Housing.
Description of the Need for the Information and its Proposed Use: Mortgage programs require that final endorsement, the mortgagor and the general contractor certify to outstanding liens or unpaid obligations contracted in connection with the mortgage transactions. Also, the Department uses the form to assure that approved funds are not exceeded.
Form Number: HUD–92023.
Respondents: Businesses or Other For-Profit and Non-Profit Institutions.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92023	465		1		1		465

Total estimated burden hours: 465.
Status: Extension.
Contact: Richard S. Fitzgerald, HUD, (202) 426–0283, John Allison, OMB, (202) 395–6880.

Date: February 6, 1990.

Proposal: Commitment to Guarantee Mortgage-Backed Securities.
Office: Government National Mortgage Association (GNMA).
Description of the Need for the Information and its Proposed Use: HUD–11704 will be used by applicants to apply for GNMA commitment authority to guarantee mortgage-backed securities and to request the assignment of a pool number.
Form Number: HUD–11704.
Respondents: Businesses or Other For-Profit.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–11704	1,200		4		.25		1,200

Total Estimated Burden Hours: 1,200.
Status: Reinstatement.
Contact: Charles Clark, HUD, (202) 755–5535, John Allison, OMB, (202) 395–6880.

Date: February 6, 1990.

Proposal: Actions to Reduce Losses in FHA Programs, FR–2491.
Office: Housing.
Description of the Need for the Information and its Proposed Use: This rule would require a mortgage when notified by the FHA Commissioner that the mortgagee had a higher than normal early serious defaults and claims in the proceeding year to submit a report to the Commissioner and, if applicable, a plan and a timetable for necessary corrective actions.
Form Number: None.
Respondents: Individuals or Households, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	200		1		40		8,000

Total Estimated Burden Hours: 8,000.
Status: Reinstatement.
Contact: Andy Zirneklis, HUD (202) 755–6924, John Allison, OMB, (202) 395–6880.

Date: February 8, 1990.

[FR Doc. 90–3434 Filed 2–13–90; 8:45 am]
BILLING CODE 4210–01–M

Office of Community Planning and Development

[Docket No. N–90–3018]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Community Planning and Development; HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be

sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy .

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). It has also requested that OMB complete its review within three days.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 7, 1990.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

Justification

1. The following circumstances make the collection of information necessary:

The information is needed primarily to assist HUD in selecting proposals to be awarded Transitional Housing funds under the Supportive Housing Demonstration program as authorized by the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77) and the final rule governing Transitional Housing (24 CFR Part 577) published in the **Federal Register** (54 FR 47024) on November 8, 1989. Selections will be made based on the ranking factors contained in the final rule at § 577.215. Section 577.210 of the final rule mandates the collection of the information described in the Transitional Housing application forms and instructions.

2. The information collected will be used in the following manner:

Part 1, Project Summary: A major function of this form is to assist HUD in computing the amount of non-Federal resources that would be matched by the Transitional Housing funds. Applicants are required to match Transitional Housing funds for acquisition, rehabilitation, and new construction activities. Transitional Housing grants are available for up to 75 percent of operating, supportive services, and employment assistance program costs in the first two years and 50 percent in the next three years. Applicants are required to provide the remainder. Documentation supporting the availability of the non-Federal resources is required to ensure that a firm basis exists for the matching calculation and that applicants do not receive credit in the competition for guesses about the amount of non-Federal resources to be provided. The form also helps ensure that sufficient resources would be available to cover total activity costs, that no more than 5% of the Transitional Housing award is used for administration of the award, and that applicants do not receive more than the maximum Transitional Housing funds allowed by regulation. Additionally, the instructions require applicants which are private nonprofit organizations to submit information to allow HUD to determine financial responsibility, as required by § 577.210(b)(1)(i) of the final rule.

Part 2, Project Description: The description of the facility, the supportive services to be provided, the budget breakdown, and the homeless population to be served, as required by § 577.210(b) (3) and (4) of the final rule, will assist HUD in assigning rating points for innovation, delivery of supportive services, cost effectiveness and employment assistance programs. These criteria for assigning rating points are described at § 577.215. The question on when homeless persons will begin to be served by the proposed activities will be used as part of the evaluation of the applicant's capacity, referred to in § 577.210(b)(1). The question on displacement is designed to ensure that the applicant is counseled by HUD about its responsibilities for relocation assistance should the project involve the displacement of any family, individual, business, nonprofit organization, or farm. The question regarding the portion of funds requested to serve homeless families with children will assist HUD in ensuring that the statutory requirement for awarding, at a minimum, $20 million to such projects will be met. The question about whether the project involves only improvements to existing transitional housing structures to bring the structures to a level that meets applicable health and safety standard will distinguish such projects, which are eligible for funding under § 577.125, from ineligible projects requesting support for existing programs.

Part 3, Budget for Operations and Supportive Services: This budget information will assist HUD in assigning rating points for cost effectiveness by considering the extent to which the applicant's proposed costs for operating a facility and providing supportive services are reasonable in relation to the services to be provided. It will also help ensure that there will be adequate resources available for facility operations and supportive services for any structure acquired or rehabilitated with Transitional Housing funds.

Part 4, Ranking Information: The information requested, in complement with information in other parts of the application will assist HUD in rating seven of the ranking criteria described in § 577.215. Specifically, this form requires applicants to provide information about their capacity and about the project's innovative features, response to unmet needs, delivery of supportive services, cost-effectiveness, employment assistance program, and status of site control.

Part 5, Additional Documentation: Each item described on this form is required by § 577.210 of the final rule. The documentation will be used to determine if various prerequisites for Transitional Housing funding have been met, such as consistency of the project with local plans.

3. Development of computer software for use of applicants in preparing their applications was determined not to be cost effective because applications are prepared only on occasion (no more than once a year) and applicants are unlikely to be the same from year to year. In addition, many applicants are expected to be private nonprofit organizations with small operating budgets and little, if any, computer support.

4. To avoid duplication of information, instructions for part 3 allow applicants to incorporate by reference information from part 1 rather than requiring repetition of the information.

5. Similar information collected in the past cannot be used instead of the information being requested in the application because up-to-date data is needed for the purpose of selecting the best proposals for grant awards.

6. The wide range of eligible applicants, including states, local governments, tribes, and private nonprofit organizations, and the need to consider all applications on an equal basis made it difficult to give special consideration to the burden placed on small entities by this collection of information. Instead, efforts were made to minimize the burden placed on all applicants, while at the same time ensuring that sufficient information would be provided to allow HUD to determine and select the best proposals.

7. Considering that the information in the application forms will only be collected for the competition, the Transitional Housing program could not operate if the collection were conducted less frequently.

8. This information collection is being conducted in a manner consistent with the guidelines in 5 CFR 1320.6.

9. The information collection requirements contained in these application forms were described in the final rule for the Supportive Housing Demonstration program, published in the Federal Register on November 8, 1989. In the preamble to that rule, the public was provided the opportunity to send comments to HUD by December 8, 1989, regarding the estimated public reporting burden or any other aspect of the collection of information described in the rule, including suggestions for reducing this burden. The need to proceed quickly with the funding competition limited the opportunity to consult further with the public about this information collection.

10. To the extent that any information collected is of a confidential nature, there will be compliance with Privacy Act requirements. However, the proposed application does not request the submission of such information.

11. This information collection does not include any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

12. Estimates of the annualized cost to the Federal Government and to the respondents are of this information collection are:

Federal Government Cost:	
Review, rank and select applicants	$51,200.00
Notify selected applicants (clerical and professional staff time)	1,000.00
Total	52,200.00
Respondent's Cost (per site):	
Preparation of proposal	$504.00
Administrative expenses	750.00
Total	1,254.00

13. The following are estimates of the burden of this collection of information:

	No. of respondents	Frequency of response	Hours per response	Burden hours
Application	400	1	42	16,800

14. The burden hours have not been increased for the collection of information in the application forms.

15. The results of this collection of information are not planned to be published for statistical use.

Application for Transitional Housing (TH)

Supportive Housing Demonstration Program

BILLING CODE 4210-29-M

Transitional Housing (TH) under the Supportive Housing Demonstration Program

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

OMB Approval No. 2506-xxxx ()

General Instructions

1. Purpose: This application is for use by States, units of general local government, other governmental entities, Indian tribes, and private nonprofit organizations in applying for assistance for Transitional Housing under the Supportive Housing Demonstration program.

2. Regulations: Regulations governing Transitional Housing are contained in a final rule (24 CFR Part 577) published by HUD on November 8, 1989 (54 FR 47024). References to sections in Part 577 are contained throughout the application. A copy of the regulations is included in the application package.

3. Application Deadline: The application must be received at the Washington, D.C. address shown in paragraph 4 not later than 3:00 P.M., Washington, D.C. time, on the date indicated in the Notice of Funds Availability (NOFA) published in the Federal Register. An application received after the exact date and time specified will be late and will not be considered for funding.

a. Hand carried applications. To be considered timely, a hand carried application must be received at the Washington, D.C. address shown below by the date and time specified. All hand carried deliveries received after the time and date specified or delivered to the wrong room will be considered late. Applicants are reminded that use of commercial delivery service usually results in the actual delivery to HUD by a messenger. A hand carried application delivered by a messenger after the exact date and time specified is considered late.

b. Mailed applications. To be considered timely, a mailed application will be considered as received on time at the Washington, D.C. address shown below if it is postmarked on or before the deadline date for receipt of applications specified in the Notice of Funds Availability published in the Federal Register. However, the application must have been mailed through the United States Postal Service (USPS) and must bear a clearly legible stamp showing the date of mailing. Any type of special USPS mail may be used including but not limited to Express, Priority, Registered and Certified. These types of mail usually have a clear postmark showing the date of mailing. It is the responsibility of the applicant to ensure that a clear postmark is on the package. Applications received after the deadline date and showing private metered postmarks or use of any non-USPS carrier will be considered late. (Applications received at the Washington, D.C. address on or before the deadline date showing private metered postmarks or use of any non-USPS carrier will be considered timely.)

4. Where to send applications: An original and one copy of the application must be sent to the following address:

Department of Housing and Urban Development
Office of Community Planning and Development
Special Needs Assistance Programs, Room 7262
451 7th Street, S.W.
Washington, D.C. 20410

Attention: Mr. James N. Forsberg

In addition, a copy of the application must be sent to the HUD field office serving your area, as listed in the Notice of Funds Availability. That copy should be received by the field office by the deadline date, but a determination that your application was received in time to be considered for funding will be made solely on receipt of the application at the Washington, D.C. address shown above.

5. Application Content:

a. Transmittal Letter. Prepare a brief letter transmitting the application and providing the name and telephone number of a person who may be contacted by HUD concerning the application. The letter should be signed by the authorized representative of the applicant.

b. SF-424. Included in this application is a standard form used as a cover sheet for applying for Federal assistance. After completion, it must be signed by the authorized representative of the applicant. Executive Order 12372, which is referred to in the SF-424, does not apply to Transitional Housing. Joint applications are not permitted. Therefore, there should be only one signature.

c. Certifications. The applicant must provide a copy of the required certifications statement signed by the authorized representative of the applicant. A copy of the required certifications statement appears in this application immediately after the SF-424. The signed copy should be attached to the SF-424.

d. Table of Contents. Prepare a table of contents listing the major parts and supporting documentation of the application. For the ease of review, please mark each major part with tabs or other dividers. Also, for ease of reference, after the total application is assembled, please number every page of the application sequentially, starting with the first page following the table of contents.

e. Part 1, Project Summary. Prepare this form following the instructions provided and enclose all required supporting documentation.

f. Part 2, Project Description. Prepare this form following the instructions provided and enclose all required supporting documentation. If a project is proposed to be carried out at more than one site, a separate copy of this form and the supporting documentation is needed for each site.

g. Part 3, Budget for Operations and Services. Prepare this form following the instructions provided and enclose all required supporting documentation. This budget form covers resources and expenses for facility operations, supportive services and, if applicable, employment assistance programs. It must be completed by all applicants for Transitional Housing funds regardless of whether TH funds are being requested to pay such expenses.

h. Part 4, Ranking Information. Following the instructions which appear at the top of the Part 4 form, enclose with this form the required information.

i. Part 5, Additional Documentation. Following the instructions which appear at the top of the Part 5 form, enclose with this form the required information.

6. For Further Information: If you have any questions regarding the Transitional Housing application or any other aspects of the Transitional Housing program, please call the HUD field office serving your area, as listed in the Notice of Funds Availability. Following the application deadline, applicants should not contact HUD regarding their application. Applicants will be notified that their applications were received.

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

Department of Housing and Urban Development

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 14.178

TITLE: Supportive Housing Demonstration: Transitional Housing

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☒ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Applicant Certifications

The Applicant hereby assures and certifies that:

1. It will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and regulations pursuant thereto (Title 24 CFR Part I), which state that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will immediately take any measures necessary to effectuate this agreement. With reference to the real property and structure(s) thereon which are provided or improved with aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer, the transferee, for the period during which the real property and structure(s) are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

It will comply with The Fair Housing Act (42 U.S.C. 3601-20), as amended, and with implementing regulations at 24 CFR Part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing.

It will comply with Executive Order 11063 on Equal Opportunity in Housing and with implementing regulations at 24 CFR Part 107 which prohibit discrimination because of race, color, creed, sex or national origin in housing and related facilities provided with Federal financial assistance.

It will comply with Executive Order 11246 and all regulations pursuant thereto (42 CFR Chapter 60-1), which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and shall take affirmative action to ensure equal employment opportunity. The applicant will incorporate, or cause to be incorporated, into any contract for construction work as defined in Section 130.5 of HUD regulations the equal opportunity clause required by Section 130.15(b) of the HUD regulations.

It will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701a), and regulations pursuant thereto (24 CFR Part 135), which require that to the greatest extent feasible opportunities for training and employment be given to lower-income residents of the project and contracts for work in connection with the project be awarded in substantial part to persons residing in the area of the project.

It will comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and with implementing regulations at 24 CFR Part 8, which prohibit discrimination based on handicap in Federally-assisted and conducted programs and activities.

It will comply with the Age Discrimination Act of 1975 (42 U.S.C. 6101-07, as amended, and implementing regulations at 24 CFR Part 146, which prohibit discrimination because of age in projects and activities receiving Federal financial assistance.

It will comply with Executive Orders 11625, 12432, and 12138, which state that program participants shall take affirmative action to encourage participation by businesses owned and operated by members of minority groups and women.

2. It will provide drug-free workplaces in accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. 701) by:

(a) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees who violate the prohibition;

(b) establishing a drug-free awareness program for its employees;

(c) requiring each employee involved in the performance of the grant to be given a copy of the statement described under (a) above;

(d) requiring employees to abide by the terms of the statement under (a) above and to notify the employer of any criminal drug statute conviction for a violation as described in (a) above;

(e) taking appropriate personnel action within a specified time frame against any employee convicted of a criminal drug statute violation occurring in the workplace (up to and including termination of employment) or requiring satisfactory participation in an approved drug rehabilitation program;

(f) making a good faith effort to maintain a drug-free workplace by implementing the requirments of (a) through (e) above;

(g) providing the street address, city, county, state, and zip code for the site or sites where the performance of work in connection with the grant will take place. For some applicants who have functions carried out by employees in several departments or offices, more than one location may need to be specified. It is further recognized that States and other applicants who become grantees may add or change sites as a result of changes to program activities during the course of grant-funded activities. Grantees, in such cases, are required to advise the HUD Field Office by submitting a revised "Place of Performance" form. The period covered by the certification extends until all funds under the specific grant have been expended.

3. It will provide the assurances required by Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (42 U.S.C. 4601-4655) (URA), and comply with 49 CFR Part 24, which contains the government-wide regulations implementing the URA.

4. It will comply with the requirements of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821-4846, and implementing regulations at 24 CFR Part 35 (except as superseded in 24 CFR 579.325(d)(2)).

5. The environmental effects of this application will be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (NEPA) and the related environmental laws and authorities listed in HUD's implementing regulations at 24 CFR Part 50 or Part 58, depending on who is responsible for the environmental review. States or governmental entities with general governmental powers (see 24 CFR 840.5) must assess the environmental effects of each application for assistance in accordance with the procedural provisions of NEPA and the regulations contained in 24 CFR 58.

6. (a) No Federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and of more than $100,000 for each such failure.

7. It will comply with the maintenance of effort requirements described at 24 CFR 577.125(b).

8. The project will be operated for no less than 10 years from the date of initial occupancy for the purpose specified in the application.

Signature of Authorized Certifying Official	Title
X	
Applicant Organization	Date Submitted

Transitional Housing (TH)
Part 1
Project Summary

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

OMB Approval No. 2506-XXXX ()

A. Name of Applicant :

B. Type of Applicant :

C. Is the Applicant a Primarily Religious Organization ?

☐ Yes ☐ No (reference 577.125(c) of the TH regulations)

D. Name of the Funding Competition Request : (see instructions)

E. Address(es) of Site(s) :

F. Narrative Summary:

Attach additional sheet(s) if necessary.

G. Sources and Uses Summary:

Activity Category (a)	Total Activity Cost (cols. c thru e) (b)	TH Amount Requested (c)	Other Federal Funds (d)	Balance of Activity Cost (e)	Other Contributions (f)
1. Acquisition	$ =	$ +	$ +	$	
2. Substantial Rehabilitation	$ =	$ +	$ +	$	
3. Subtotal (sum lines 1 & 2)	$ =	$ +	$ +	$	
4. New Construction (under limited circumstances)	$ =	$ +	$ +	$	
5. Moderate Rehabilitation	$ =	$ +	$ +	$	
6. Operating Costs	$ =	$ +	$ +	$	
7. Supportive Services	$ =	$ +	$ +	$	
8. Employment Assistance	$ =	$ +	$ +	$	
9. Subtotal (sum of lines 3 through 8)	$ =	$ +	$ +	$	
10. Administrative Costs (Maximum 5% of 9(c))		$			
11. Total TH Amount Requested		$			

form HUD-40076

Instructions for Part 1, Project Summary

General: Each application for Transitional Housing (TH) funding may include only one project. Each project will be assigned points and ranked separately in competition with other proposals, unless separate funding competitions are announced in the Notice of Funds Availability, as described below in item D.

A project may include one or any combination of the following types of activites: (1) acquisition, and/or substantial rehabilitation of existing structures (reference Section 577.105); (2) moderate rehabilitation of existing structures (reference 577.110); (3) new constuction, under limited circumstances (reference 577.112); (4) operating costs and supportive services costs for a period not to exceed five years (reference 577.115); and (5) employment assistance programs (reference 577.117).

A project may include one structure (site) or more than one structure (sites), but the limit on the amount of TH funding available for each type of activity, as described in the sections referenced above, applies to the combined amount of TH funds to be spent for the activity at all project sites. For example, if the proposed project involves moderate rehabilitation of several structures, the limit of the amount of TH funds that may be used for moderate rehabilitation applies to the combined amount of TH funds to be spent for the moderate rehabilitation at all project sites.

Item A: Applicant - Enter the name of the applicant. Note: The applicant's name should be the same as shown in Item 5 of Standard Form 424, Application for Federal Assistance.

Item B: Applicant Type - Enter State, metropolitan city, urban county, other governmental entity, Indian tribe, or private nonprofit organization, as appropriate, for the applicant identified in Item A.

Special Instructions for Private Nonprofit Organizations:

If the applicant is a private nonprofit organization, then the following information and documentation must be provided in order to be considered for funding:

1. A copy of the organization's most recent Statement of Support, Revenue and Expenses, and Balance Sheet;

2. Evidence that the nonprofit organization:

a. operates in a manner so that no part of its net earnings inures to the benefit of any member, founder, contributor or individual. One acceptable form of evidence for this is a copy of the organization's IRS ruling providing tax exempt status under Section 501(c) (3) of the IRS Code of 1986, as amended;

b. has a voluntary Board of Directors; and

c. (i) has a functioning accounting system that is operated in accordance with generally accepted accounting principles (as evidenced by either an audit or certification by a CPA or Public Accountant, or some other independent third-party qualified to provide an informed opinion); or

(ii) has designated a qualified entity to maintain a functioning accounting system in accordance with generally accepted accounting principles. Provide the name and address of the entity if one has been designated.

Note: HUD will not consider an application for funding from a private nonprofit applicant which does not meet the above requirements.

Item C: To the question: "Is the applicant a primarily religious organization?" mark "Yes" or "No" as appropriate (reference 577.125(c)).

Item D. Funding Competition Request: In accordance with 577.205 (b), HUD may establish separate funding competitions for specified categories of transitional housing projects (e.g. housing that is primarily designed to serve homeless families with children or deinstitutionalized homeless persons). Such competitions would be announced in the Notice of Funds Availability (NOFA) for the applicable fiscal year in which funds for the Supportive Housing Demonstration program for transitional housing have been authorized.

Note: If HUD has not announced separate funding competitions, this line should be left blank. For example, the NOFA for Fiscal Year 1990 did not establish separate funding competitions; therefore, Line D would not apply to applications requesting FY 1990 funding.

Item E: A proposal for TH assistance may involve more than one project site (structure). In such cases, list the address of each site.

Item F: Briefly describe your proposal. If your proposal is for expansion of an existing facility, describe what currently exists and how the proposal relates to it.

Item G: Sources and Uses Summary:

Column (a): Activity Category - The following describes the types of funding available under the TH program.

Line 1. Acquisition: Advances to defray the cost of acquiring existing structure(s), or to repay any outstanding debt on a loan made to purchase existing structure(s), for use in the provision of transitional housing. An applicant requesting an advance for repayment of an outstanding loan must submit the following information:

a. A copy of the contract of sale identifying the property listed in item E, above;

b. A copy of the loan agreement, mortgage agreement, or deed of trust;

c. Documentation showing the loan purpose and balance owed on the loan, mortgage or deed of trust; and

d. Certification that the structure has not been assisted with TH funds before the date of the application.

Line 2. Substantial Rehabilitation: Advances to defray the cost of substantially rehabilitating structures for use in the provision of transitional housing. Substantial rehabilitation is defined as rehabilitation of a building that involves costs of rehabilitation in excess of 75 percent of the value of the building before rehabilitation.

Line 3. Subtotal (sum lines 1 & 2): If the applicant meets the matching share requirement described at Section 577.130(a), HUD will make advances for acquisition and/or substantial rehabilitation consistent with the following terms (reference 577.105):

a. Amount: The advance may not exceed the lower of:

(i) $200,000 (or in areas determined by HUD to have high costs, up to $400,000; a list of these areas is provided in the application package); or

(ii) The total cost of the acquisition/substantial rehabilitation of the project's building(s) minus the applicant's contributed resources for meeting the acquisition/substantial rehabilitation costs.

For example, if the acquisition and substantial rehabilitation cost of the project's building(s) is $190,000 and the applicant proposes to contribute $10,000 in donated materials and $5,000 in cash, then the maximum advance HUD will make is $175,000 ($190,000 minus $15,000 = $175,000). This presumes the applicant can provide non-Federal contributions to match the $175,000 advance. Although the applicant's contribution of $15,000 would be counted toward the match, the applicant still needs to provide the match for the remaining $160,000.

b. Other terms of an advance for acquisition/substantial rehabilitation are described in section 577.310 of the regulations.

Line 4. New Construction: An advance may be made to defray the cost of new construction of a structure for use in the provision of transitional housing. If the applicant provides and HUD concurs in the following:

a. The project involves the cooperation of a city and of a State university. Documentation may include letters, memorandums of understanding or agreements with the appropriate parties outlining their level of cooperation in the project;

b. The land on which the structure will be constructed has been donated to the applicant by a State university;

c. The proposed structure has a minimum of 10,000 square feet. Evidence may include a footprint of the structure or an architect's certification of

the size of the structure; and

d. The applicant's proposal involves a model TH project with a comprehensive support system including health services, job counseling, mental health services and housing assistance and advocacy.

Note: The terms of an advance for New Construction are equivalent to those described under the above line 3 (reference 577.112).

Line 5. Moderate Rehabilitation: Grants to defray the cost of moderate rehabilitation of existing structures for use in the provision of transitional housing. Moderate rehabilitation is defined as rehabilitation of a building that involves costs of 75 percent or less of the value of the building before rehabilitation.

Note: The terms of a grant for moderate rehabilitation are equivalent to those described under line 3 above (reference 577.110).

Line 6. Operating Costs: Grants for a period not to exceed five years to pay for the costs associated with the day-to-day operation of transitional housing, including expenses incurred for administration (including staff salaries), maintenance, minor or routine repair, security, rental, utilities, fuel, furnishing and equipment of such housing, and relocation assistance (reference 577.5, "Operating Costs").

Line 7. Supportive Services: Grants to pay for the costs of providing supportive services to assist residents of transitional housing for a period not to exceed one to five years. Such costs include salaries paid to providers of supportive services, the costs of conducting resident supportive services needs assessments, and any other costs directly associated with providing such services.

Note: The following information applies to the above Lines 6 & 7. If this proposal requests an operations and/or supportive services grant and the relating structure(s) listed in item E is incomplete (i.e. not available for occupancy), the applicant must provide reasonable assurance of completion of construction within nine months after notification of grant award. Assistance for operations and/or supportive services will not begin until the date of initial occupancy. If the structure(s) listed in item E will not be available for occupancy as of the date of this application submission, provide the following documentation.

a. Evidence that construction financing has been obtained. Such evidence may include a firm commitment or executed loan agreement from the party providing the construction financing; and

b. A copy of the construction contract for the proposed structure containing the terms and conditions with regard to cost and date of completion, and the name of the contractor carrying out the construction contract.

Line 8. Employment Assistance: Grants for establishing and operating an employment assistance program for residents of transitional housing for a period not to exceed five years. In order to be eligible for assistance, the applicant's proposal must provide for at least the following: (1) Employment of residents in the operation and maintenance of the transitional housing and (2) Where necessary and appropriate, payment of reasonable transportation costs of residents to places of employment outside the transitional housing.

Note: The following information applies to Lines 6, 7 & 8. Upon approval of a grant(s), HUD will obligate funds for the operating period sought (but not more than a 5-year period) based upon the applicant's estimate of such costs less the applicant's percentage share of such costs. Each year, for up to five years, HUD will make payments to the applicant from the amounts obligated. The annual funding level is subject to reduction under Section 577.400 of the regulations.

Line 9: Subtotal: Sum lines 3 through 8.

Line 10. Administrative Costs: Costs of administering the TH assistance, such as the cost of audits. Recipients are allowed to expend no more than 5% of line 9, column (c) for costs associated with the administration of their advances and/or grants.

Column (b): Total Activity Cost - For each line, 1 through 9, enter the sum of columns (c) through (e). For each activity category listed in column (a), Total Activity Cost represents the total amount needed from all sources to carry out the activity. Do not include amounts from column (f).

Column (c): TH Amount Requested - Enter the amount of TH funds requested for each activity category listed in column (a).

Line 1. Acquisition: Enter the amount of the TH advance requested for acquisition.

Line 2. Substantial Rehabilitation: Enter the amount of the TH advance requested for substantial rehabilitation.

Line 3. Subtotal: Add the amounts on line 1 & 2 and enter total on Line 3. As discussed in line 3, column (a) above, this total cannot exceed the lower of $200,000 ($400,000 for high cost areas) or the total cost of the acquisition/substantial rehabilitation of the structure(s) minus the applicant's contributed resources.

Line 4. New Construction (under limited circumstances): Enter the amount of the HUD advance requested for new construction of transitional housing. As discussed above, this total cannot exceed the lower of $200,000 ($400,000 for high cost areas) or the total cost of the new construction minus the applicant's contributed resources.

Line 5. Moderate Rehabilitation: Enter the amount of the TH grant requested for moderate rehabilitation. As discussed above, this total cannot exceed the lower of $200,000 ($400,000 for high cost areas) or the total cost of the rehabilitation minus the applicant's contributed resources.

Line 6. Operating Costs: Enter the amount of the TH grant requested for the operation of transitional housing. Requests for assistance may be up to 75% of the operation costs for each of the first two years and up to 50% of such costs for each of the next 3 years (reference 577.115). The amount requested may cover a period of from one (1) to five (5) years and must be equal to the amount shown in Part 3, Budget, line 1a, column (g).

Line 7. Supportive Services: Enter the amount of the TH grant requested for the supportive services to be provided to the residents of transitional housing. Requests for assistance may be up to 75% of supportive services costs for each of the first two years and up to 50% of the such costs for each of the next 3 years (reference 577.115). The amount requested may cover a period of from one (1) to five (5) years and must be equal to the amount shown in Part 3, Budget, line 1b, column (g).

Line 8. Employment Assistance: Enter the amount of the HUD grant requested for the employment assistance program to be provided to the residents of the transitional housing. Requests for assistance may be up to 75% of employment assistance program costs for each of the first two years and up to 50% of the such costs for each of the next 3 years (reference 577.117). The amount requested may cover a period of from one (1) to five (5) years and must be equal to the amount shown in Part 3, Budget, line 1c, column (g).

Line 9. Subtotal: Enter the sum of all amounts listed in column (c), lines 3 through 8.

Line 10. Administrative Costs: Enter the amount of TH grant requested to administer the TH advances and/or grants. The amount entered may not exceed 5% of line 9, column (c).

Line 11. Total TH Amount Requested: Enter the sum of lines 9 and 10, column (c).

Column (d). Other Federal Funds: For each line, 1 through 8, enter any Federal funds, other than the amount of TH funds shown in column (c), that have been committed for use in meeting the expenses of the corresponding activity listed in column (a). For example, grant funds awarded by the Federal Emergency Management Agency may represent part of the funds needed for operating the facility described in this TH proposal. Federal monetary contributions to the activity are not included in computing the required match for acquisition, rehabilitation or new construction. Note, however, that funds from Community Development Block Grants and Community Services Block Grants are considered non-Federal sources; they may be included as non-Federal cash contributions, as described below (reference 577.130).

In support of the amount entered in column (d) for any activity category, attach a list of the source and amount of each Federal commitment and provide evidence substantiating each commitment.

On line 9, enter the sum of all amounts listed in column (d), lines 3 through 8.

Column (e): Balance of Activity Cost - For each line, 1 through 8, enter any resources, other than Federal monetary contributions, that will be used in meeting the expenses of the corresponding activity listed in column (a). However, such resources are limited to those for which documentation is submitted with this application supporting the availability of non-Federal contributions. This includes both cash and the value of in-kind contributions. This may include funds and other contributions from State and local governments, Community Development Block Grants, Community Services Block Grants, private sources, and salaries paid to residents of transitional housing under the applicant's employment assistance program. For example, if an applicant proposes to substantially rehabilitate a building it currently owns, and the applicant will contribute $10,000 worth of building materials and $5,000 in local cash toward the cost of rehabilitation, then the applicant should enter $15,000 on line 2, column (e).

The value of contributions related to the activity, but which will not actually meet part of the expense of the specific activity, must not be entered in column (e). For example, if the building being rehabilitated is donated to the project, the building's fair market value must not be entered in column (e), because that donation will not help meet the cost of the rehabilitation. The donation of the building will be reflected in column (f), Other Contributions.

In support of the amount entered in column (e) for any activity category, attach a list of the source and amount of each contribution to the balance of the activity's cost. Also, see the discussion below on the documentation required to be submitted to support the availability of non-Federal contributions.

On line 9, enter the sum of all amounts listed in column (e), lines 3 through 8.

Column (f): Other Contributions: For each line, 1 through 8, enter the value of contributions related to the corresponding activity, but which will not actually meet part of the expense of that activity. See example under the instructions for column (e).

Such contributions are limited to those for which documentation is submitted with this application supporting the availability of non-Federal contributions. In support of the amount entered in column (f) for any activity category, attach a list of the source and amount of each contribution related to the activity. Also see the discussion below on the documentation required to be submitted to support the availability of non-Federal contributions.

On line 9, enter the sum of all amounts listed in column (f), lines 3 through 8.

Required Match: The HUD Transitional Housing program requires that the applicant match the TH funds provided by HUD for acquisition / substantial rehabilitation/new construction advances and moderate rehabilitation grants with non-Federal sources. Amounts entered in columns (e) and (f), lines 1-5, will be used in calculating the match. Non-Federal sources include State or local agency funds, Community Development Block Grants, Community Services Block Grants, private donations, any salary paid to staff from non-Federal sources to carry out the program of the applicant, salaries paid from non-Federal sources to residents of transitional housing under the applicant's employment assistance program, the value of any donated material or building and the value of any lease on a building. HUD field office staff members are available to provide technical assistance on meeting matching share requirements. (reference 577.130)

Documentation to Be Submitted to Support the Availability of Non-Federal Contributions. Each amount entered in column (e) or (f) must be supported by documentation, as described below:

1. Cash Contributions:

a. By Applicant - An applicant committing its own funds must commit to a specific dollar amount in writing by an authorized representative of the applicant with the authority to certify that such funds are currently available, committed to the project and will be held exclusively for this purpose. If the commitment requires the authorization of a board, the applicant should submit a copy of the resolution making that commitment. The applicant must submit financial statements demonstrating that the funds are currently available or the applicant may submit a letter from a banking institution in which such funds are maintained certifying the amount of the funds on deposit and that such funds are unencumbered and available for this project.

Rental Income - An applicant requesting an operating grant may include in the applicant's non-Federal share, rental payments to be paid (during the 5-year period covered by the Budget shown in Part 3 of this application) by residents of the transitional housing assisted under this proposal. Documentation of the contribution of rental income for the applicant's non-Federal share would show the total estimated number of households occupying the facility, an estimate of the monthly or annual rent to be charged, and the estimated total annual amount of rent to be collected.

b. By Third-party - If the applicant proposes to use funds from a grant or donation as a source of its non-Federal contributions in either columns (e) or (f), then the following documentation must be submitted for each such grant or donation:

(i) the name of the party making the grant or donation;

(ii) the dollar amount of the grant or donation;

(iii) evidence, such as a commitment letter from the third-party, that the funds have been granted or pledged, or if this is not possible, the factual basis on which the applicant has the expectation of receiving the funds, such as past funding experience; and

(iv) the approximate date the funds will be made available. The commitment may be conditioned upon the receipt of HUD funds under this proposal, however, the commitment must not include any other conditions affecting the availability or provision of the grant or donation.

2. "In-kind" contributions:

a. Contribution of building - An applicant requesting an advance and/or a grant may contribute its fee simple ownership in the structure(s) for the site(s) shown for this proposal in Item E. of this application form. HUD will recognize the fair market value of the structure to be contributed. If the applicant is making such a contribution, then the following documentation must be submitted:

(i) a pledge from an authorized official of the applicant contributing the real property to the project; and

(ii) evidence substantiating the fair market value of the real property identified in Item E. of this form. Such evidence may consist of a statement of the appraised value of the building and identification of the sources of the appraisal. The appraisal itself must be kept on file by the applicant.

b. Contribution of leasehold interest - An applicant requesting an advance or a grant may contribute its leasehold interest in the structure(s) listed in Item E. of this application form. HUD will recognize the fair rental value of the building. If the applicant is making such a contribution, then the following documentation must be submitted:

(i) a pledge from an authorized official of the applicant contributing the leasehold interest of the structure to the project;

(ii) an executed copy of the applicant's lease for the structure; and

(iii) evidence substantiating the fair rental value of the lease. Such evidence may include the lease submitted for (ii) above if it shows the term of the lease and the annual lease amount to be paid and documentation from an independent third-party, such as a real estate firm, with knowledge of the area, attesting to the current market rental rates for similar space in the project area.

c. Volunteer time and services - HUD will recognize time and services to be contributed to the project by volunteers at the value of $5.00 per hour. To support the volunteer time and services to be used as non-Federal contributions, provide the following information by activity category (i.e., substantial rehabilitation, operating costs, etc):

- the name of the person or organization volunteering time and services;
- a written commitment from the person or organization specifying the number of hours of volunteer time and services to be contributed; and
- a summary of the total number of hours to be contributed, by activity category, and the total value of those hours, calculated at $5.00 per hour.

d. Contributed materials - HUD will recognize the value of materials to be contributed to the project. To support the value of the donated materials, provide the following information by activity category (i.e. substantial rehabilitation, operating costs,etc):

- the name of the person or organization donating the materials;
- a written commitment from the person or organization to provide the donated materials, including a dollar valuation of the materials; and
- a list of the materials with their estimated value and the method for determining that value.

Checklist: The required information described in these Part I instructions should be enclosed behind Part 1, the Project Summary form, in the order it is described. Label each enclosure. To ensure that the necessary information is submitted, place check marks in the boxes below when the information is assembled in order and enclosed behind the form. Where a listed item does not apply, write "NA" in the box.

☐ **1.1 Nonprofit Financial Information:** If the applicant is a private nonprofit organization, provide a copy of the required financial documents and other evidence concerning the nonprofit's operations.

☐ **1.2 Acquisition:** If an advance is used to repay outstanding debt on a loan on an existing structure, provide the financial information as requested under column (a), line 1.

☐ **1.3 New Construction:** If an advance is used for new construction, provide the documentation as requested in Part 1, column (a), line 4.

☐ **1.4 Unavailable for Occupancy:** Provide the information as requested in Part 1, column (a), line 7 under a & b of the "note" section.

☐ **1.5 Other Federal Funds:** In support of the amounts entered in Part 1, column (d), *Other Federal Funds*, list the source and amount of each Federal commitment for each activity category listed in column (a) and provide evidence substantiating each commitment.

☐ **1.6 Balance of Activity Cost:** In support of the amounts entered in Part 1, column (e), *Balance of Activity Cost*, list the source and amount of each contribution for each activity category listed in column (a) and provide the documentation required concerning the availability of the contribution.

☐ **1.7 Other Contributions:** In support of the amounts entered in Part 1, column (f), *Other Contributions*, list the source and amount of each contribution for each activity category listed in column (a) and provide the documentation required concerning the availability of the contribution.

Transitional Housing (TH)
Part 2
Project Description

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

OMB Approval No. 2506-xxxx ()

1. Name of Applicant :

2. Address of Site :

3. Size of Project Site : ☐ in Acres or ☐ in Sq. Ft.	4. Size of Building Sq. Ft.	5. Size of Expansion Sq. Ft.	6. Occupancy Type :	7. No. of Bedrooms Current :	Proposed	8. No. of Beds Current :	Proposed :

9. **Project Description Attachments:**
   a. Additional description of building;
   b. Description of each activity (e.g., substantial rehabilitation; supportive services) for which TH funds are being sought for this site;
   c. Budget breakdown for each activity for which TH funds are being sought for this site.

10. Families and Persons Served at this Site	(i) Currently		(ii) Proposed	
	No. of Families	No. of Persons	No. of Families	No. of Persons
a. Homeless Families with Children				
b. Homeless Individuals with Mental Disabilities				
c. Other (specify)				
d. Total				

11. Within how many months from the award of TH assistance will homeless persons begin to be served by the proposed activities?	mos.
12. Will this project involve the displacement of any "person" (i.e., individual, family, business, nonprofit, or farm)?	Yes ☐ No ☐
13. Of the TH funds requested for this site, enter the amount, if any, to be used to meet the needs of homeless families with children.	$
14. Does this project involve only improvements to existing transitional housing structures necessary to bring the structures to a level that meets applicable State and local government health and safety standards?	Yes ☐ No ☐

Instructions for Part 2, Project Description

Fill out a Part 2 form for each site identified in Item E, "Address(es) of Site(s)" in Part 1 of this application.

Item 2. Address of Site: Enter the address where the proposed project (or part of the project) will be located. Note: This address should be the same as the address (or one of the addresses) entered in Item E of Part 1 of this application.

Item 3. Project Site Size: Enter the size of the site identified in Item 2.

Item 4. Building Size: Enter the size of the building(s), in square feet, which currently exists on the project site. If this site is vacant, write "vacant" in the space provided.

Item 5. Expansion Size: If applicable, enter the number of square feet which are proposed to be added to the building(s) in Item 4.

Item 6. Occupancy Type: Enter the type of bedrooms (i.e., dormitory, single occupancy, double occupancy, or other) that are proposed under this project.

Item 7. Number of Bedrooms: In the space labeled "current," enter the number of bedrooms which currently exist in the building(s) on this site. In the space labeled "proposed," enter the total number of bedrooms which will be available in the building(s) on this site if this project is approved.

Item 8. Number of Beds: In the space labeled "current," enter the number of beds which currently exist in the building(s) on this site. In the space labeled "proposed," enter the total number of beds which will be available in the building(s) on this site if this project is approved.

Item 9. Project Description Attachments: The following information must be attached to this Part 2 form:

a. Additional description of building - Describe the outside dimensions of the building, the number of usable floors, the kitchen and bathroom facilities, and any amenities.

b. Description of each TH-assisted activity - Briefly describe each activity for which TH funds are being sought for this site. Describe the entire activity, regardless of whether TH funds are proposed to pay all, or just part, of the activity's cost. The activity categories, as listed in column (a) of Part 1 of this application, are acquisition, substantial rehabilitation, moderate rehabilitation, operating costs, supportive services, new construction and employment assistance.

If TH funds are proposed for use in acquiring, repaying an outstanding debt, substantially rehabilitating, or moderately rehabilitating an existing building, state the appraised value of the building and identify the source of the appraisal. The appraisal itself must be kept on file by the applicant.

c. Budget breakdown for each TH-assisted activity - Provide a budget breakdown for each activity for which TH funds are being sought for this site, as follows:

Acquisition:

- the total amount to be paid for the site; and
- the closing costs, but not including prepaid items.

Substantial Rehabilitation, Moderate Rehabilitation or New Construction:

- the total dollar estimate of work to be done at this site;
- a breakdown of all hard construction costs, including a breakdown of labor and material costs shown by trade (i.e., carpentry, plumbing, heating/air conditioning, etc.) and a breakdown of all soft costs (i.e., architect fees, taxes, permits, etc.) which make up the total cost of the rehabilitation or new construction work; and
- the methods by which these costs were calculated (e.g., architect's estimate, contractor's estimate, supplier's estimate, etc.).

Indicate how much of the acquisition / rehabilitation / new construction cost will be paid with TH funds.

Operating Costs and Supportive Services: Part 3 of this application, Budget, provides the needed budget breakdown for operating cost and supportive services activities. Budget information for employment assistance is also provided in Part 3. **Note: When a project is carried out at more than one site, the sum of the budgets for each activity (e.g., moderate rehabilitation) at all sites must equal the "Total Activity Cost" for that type of activity as shown in column (b) of Part 1 of this application.**

Item 10. Families and Persons Served At This Site: Indicate according to each of the listed categories of beneficiaries the number of homeless individuals and families served at the site. If a family or person served at this site can be classified in more than one of the categories listed, include that family or person in only one category to avoid double counting when the numbers are totaled on line 10d. In such cases of multiple identification, submit a separate listing denoting the number and category of persons and families affected by this, (e.g. "six persons entered on the form as Homeless Individuals with Mental Disabilities also meet the definition for Homeless Families with Children").

a. Homeless Families with Children. This means a homeless family that includes at least one parent or guardian and one child under the age of 18, a homeless pregnant women, or a homeless individual in the process of securing legal custody of any person who has not attained the the age of 18 years.

Column (i) - Enter the number of homeless families with children who are currently served at this site. Also enter the total number of persons in all of those families.

Column (ii) - Enter the estimated number of homeless families with children who will be served at this site if this project is approved, including those currently served. Also enter the total number of persons in all of those families.

b. Homeless Individuals with Mental Disabilities. This means a homeless individual who is a handicapped person and whose handicap is wholly or partially attributable to mental or emotional impairment. This term also includes a homeless family if the head of the family or spouse of the head of the family has mental disabilites (reference 577.5).

Column (i) - Enter the number of homeless families currently served at this site where the head of the family (or the spouse of the head of the family) is a homeless individual with mental disabilities. Also enter the total number of persons in all of those families plus all other homeless individuals with mental disabilities currently served at this site.

Column (ii) - Enter the estimated number of homeless families who will be served at this site if this project is approved, including those currently served, where the head of the family (or the spouse of the head of the family) is a homeless individual with mental disabilities. Also enter the total number of persons in all of those families plus all other homeless individuals with mental disabilities who are expected to be served at this site if this project is approved.

c. Other: For any group(s) of the homeless population not addressed on Lines a or b above, enter the name of that subgroup in the space provided and complete columns (i) and (ii), with column (i) showing the number of families and persons in the subgroup who are currently served at the site and column (ii) showing the persons and families expected to be served at this site if this project is approved, including those currently served.

d. Total - Enter the sum of each column within Item 10.

Item 11: Enter the number of months from grant award until homeless persons will begin to be served by the proposed activities.

Item 12: If the answer is "Yes," contact the HUD Field Office for guidance. Generally, a person occupying property who moves permanently or involuntarily as a direct result of acquisition, rehabilitation, or demolition for the project is a "displaced person".

Item 13: The statute requires that $20 million of the amount allocated to transitional housing each fiscal year be used for transitional housing projects that serve homeless families with children. If the needs of homeless families with children will be addressed in whole or in part by the project (or portion of the project) at this site, enter the amount to be used to meet those needs.

Item 14: Check "Yes" or "No", as applicable (reference 577.125(a)).

Checklist: The required information described in these Part 2 instructions should be enclosed behind Part 2, the Project Description form, in the order it is described. Label each enclosure. To ensure that the necessary information is submitted, place check marks in the boxes below when the information is assembled in order and enclosed behind the form. If there is more than one project site, a separate form and enclosures are required for each site.

☐ **2.1 Additional Description of Building:** Describe the outside dimensions of the building, the number of usable floors, the kitchen and bathroom facilities, and any amenities.

☐ **2.2 Description of TH-Assisted Activities:** Briefly describe each activity for which TH funds are being sought for this site. See Item 9.b. instructions.

☐ **2.3 Budget Breakdown for each TH-Assisted Activity:** Provide a budget breakdown for each activity for which TH funds are being sought for this site. Provide the level of detail described in Item 9.

☐ **2.4 Information on Category of Beneficiaries:** Provide a list of the homeless persons identified in Item 10 that fall into more than one category of beneficiaries. See Item 10 instructions.

Transitional Housing (TH)
Part 3

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Budget for Operations and Services

OMB Approval No. 2506-xxxx ( )

A. Name of Applicant :

B. Descriptive Title of Applicant's Project:

C. Check Box if the Project is an:
☐ Expansion of an Existing Facility or Service

Resources (a)	Year 1 (b)	Year 2 (c)	Year 3 (d)	Year 4 (e)	Year 5 (f)	Total (cols .b-f) (g)
1. TH Amount Requested						
a. TH Grant for Operations						
b. TH Grant for Supportive Services						
c. TH Grant for Employment Assistance						
2. Other Federal Funds						
3. Balance of Activity Resources						
a. Non-Federal Cash Contributions						
b. In-Kind Contributions						
4. a. Documented Resources (lines 1a thru 3b)						
b. Other Anticipated Resources						
c. **Total Resources**						
Line Item Expenses						
5. Rent						
6. Maintenance/Repair						
7. Security						
8. Utilities/Fuels						
9. Furnishings/ Equipment						
10. Staff Salaries (attributable to project)						
11. Other Operating Expenses						
12. Supportive Services						
13. Employment Assistance						
14. Total Expenses						
Start Date						
End Date						

Instructions for Part 3, Budget for Operations and Services

General: The TH regulations at section 577.210(b)(3)(iii) require each applicant to submit a budget covering a period of five years for operating costs, supportive services costs and, if applicable, employment assistance program costs. This budget is required of each applicant whether or not TH funds are being requested for any of these costs.

If the proposed project includes more than one structure, the figures provided on the Part 3 form must cover all operating costs, supportive services costs and, if applicable, employment assistance program costs at all project sites. Applicants are not required to submit a separate Part 3 budget form for each site.

The "Resources" portion of the budget includes all Federal, State, local government and private resources, divided into two categories. The first category is "Documented Resources" which covers those resources for which documentation is submitted supporting the availability of the resources. (Note: The documentation requirements for non-Federal cash and in-kind contributions are described in the instructions to Part 1 of the application under the heading "Documentation to be Submitted to Support the Availability of Non-Federal Contributions." The documentation requirement for "Other Federal Funds" is described in the instructions for column (d) in Part 1 of the application.) Only documented resources will be counted in determining whether matching requirements have been met, and only documented resources will be considered in assigning points under the ranking criteria. Documented resources are to be shown on lines 1a through 4a of the budget by year.

The second category is "Other Anticipated Resources" which covers resources expected to be available in future years to meet expenses but for which documentation has not been submitted supporting the availability of the resources. "Other Anticipated Resources" are to be shown together by year on line 4b. In Year 1 (column b), none of the resources should fall into this category. Rather, all Year 1 resources should be documented.

As described in sections 577.115 and 577.117, TH assistance is available to pay up to 75% of the combination of operating costs and supportive services costs for each of first two years, and up to 50% of the combined costs for each of the remaining three years. Similarly, TH assistance is available to pay up to 75% of the costs of an employment assistance program for each of the first two years, and up to 50% of the cost for each of the remaining three years.

Item A. Applicant's Name: Enter the name of the applicant. The applicant's name should be the same as shown in Item 5 of Standard Form 424, Application for Federal Assistance.

Item B. Descriptive Title of Applicant's Project: Enter the project title. The title should be the same as shown in Item 11 of Standard Form 424, Application for Federal Assistance.

Item C. Expansion of Existing Facility of Service: If the project involves the expansion of an existing facility or service, check the box and submit as an attachment a description of how the expansion meets one or more of the following criteria, as described in more detail in section 577.125(a):

- A substantial increase in the number of homeless persons for whom housing will be provided;
- A substantial increase in the level of supportive services to be provided;
- A substantial change in the use of existing facilities for the homeless.

Line 1a. TH Grant for Operations: TH grants for operating costs may cover a period of from one to five years. In columns (b)-(f), enter the amounts of TH funds requested for the operation of the transitional housing for each year, and enter the total for the five years in column (g). The amount entered in column (g) must equal the amount shown in Part 1 of this application on line 6, column (c).

Line 1b. TH Grant for Supportive Services: TH grants for supportive services for residents of transitional housing may cover a period of from one to five years. In columns (b)-(f), enter the amounts of TH funds requested for supportive services to be provided each year, and enter the total for the five years in column (g). The amount entered in column (g) must equal the amount shown in Part 1 of this application on line 7, column (c).

Note: For each of Years 1 and 2, the sum of the amounts entered on lines 1a and 1b may not exceed 75% of the sum of the expenses shown on lines 5-12 for the respective year. For each of Years 3 through 5, the sum of the amounts entered on lines 1a and 1b may not exceed 50% of the sum of the expenses shown on lines 5-12 for the respective year.

Line 1c. TH Grant for Employment Assistance: TH grants for employment assistance for residents of transitional housing may cover a period of from one to five years. In columns (b)-(f), enter the amounts of TH funds requested for employment assistance to be provided each year, and enter the total for the five years in column (g). The amount entered in column (g) must equal the amount shown in Part 1 of this application on line 8, column (c).

Note: For each of Years 1 and 2, the amount entered on line 1c may not exceed 75% of the expense entered on line 13. For each of Years 3 through 5, the amount entered on line 1c may not exceed 50% of the expense shown on line 13.

Line 2. Other Federal Funds: In columns (b)-(f), enter the amounts of committed Federal funds, other than the amounts of TH funds shown on lines 1a-1c, that will be used in meeting the costs of operations, supportive services and/or employment assistance each year, and enter the total for the five years in column (g). The amount entered in column (g) must equal the sum of the amounts shown in Part 1 of this application in column (d) for lines 6, 7 and 8 (Note: Funds from Community Development Block Grants and Community Services Block Grants are not considered to be Federal funds; they may be included as non-Federal cash contributions on line 3a, below.) Attach a list showing the sources and amounts of "Other Federal Funds" committed for use in meeting the costs of operations, supportive services and, if applicable, employment assistance. Alternatively, incorporate by reference relevant items from the listing of sources and amounts included in Part 1 of this application.

Line 3a. Non-Federal Cash Contributions: In columns (b)-(f), enter the amounts of cash contributions, other than Federal cash contributions shown on lines 1a-2, that will be used in meeting the costs of operations, supportive services and/or employment assistance each year, and enter the total for the five years in column (g). Only include contributions to the extent that documentation is submitted as an enclosure to Part 1 of this application supporting the availability of such contributions. Attach a list showing the sources and amounts of non-Federal cash contributions and indicating which of the activities (i.e., operations, supportive services, or employment assistance) each of the contributions supports. Alternatively, incorporate by reference relevant items from the listing of sources and amounts included with Part 1.

Line 3b. In-Kind Contributions: In columns (b)-(f), enter the value of in-kind contributions that will be used in meeting the costs of operations, supportive services and/or employment assistance each year, and enter the total for the five years in column (g). Only include in-kind contributions to the extent that documentation is submitted as an enclosure to Part 1 of this application supporting the availability of such contributions. Attach a list showing the value of the material, time and services to be contributed each year and indicating which of the activities (operations, supportive services, or employment assistance) each of the contributions supports. Alternatively, incorporate by reference relevant items from the listing of sources and amounts included with Part 1.

Note: The sum of the amounts entered in column (g) for lines 3a and 3b must equal the sum of the amounts shown in Part 1 of this application in column (e), lines 6, 7 and 8.

Line 4a. Documented Resources: For each year, enter the sum of lines 1a through 3b.

Line 4b. Other Anticipated Resources: For Years 2-5, enter the amount of anticipated resources that do not meet the documentation standards referenced above. Also for each of those years, enclose a list showing the sources and amounts of these anticipated resources.

Line 4c. Total Resources: For each year, enter the sum of lines 4a and 4b.

Lines 5-13. Line Item Expenses: For each year, enter the estimated expenses by appropriate line item for operating costs, supportive services and, if applicable, employment assistance, regardless of whether TH funds will be used to pay such costs. The line item expenses must include all estimated costs (i.e., both those to be met through actual outlays and those to be met through in-kind contributions).

If a TH grant for operating expenses is being requested, the budget must be accompanied by a brief description of each line item expense for lines 5-11, including a breakdown of the individual costs that comprise each of the line item expenses.

Line 10. Staff Salaries: Covers the salaries of staff who operate the transitional housing, but does not include the salaries of supporting service providers or employment assistance providers, which should be included on line 12 or 13, respectively. If necessary, prorate a salary between lines 10, 12 and 13.

Line 11. Other Operating Expenses: Covers any administrative cost (other than staff salaries covered in line 10) involved in operating the transitional housing. It also covers any relocation assistance to displaced persons. See section 577.315. If permanent or temporary relocation is required, submit information identifying the agency that will provide payments and services, and provide the basis for the cost estimate, by person. Line 11 does not include expenses of administering the TH advance or grant, such as audit expenses, which should be reflected only on line 8 of Part 1 of this application.

Line 12. Supportive Services: Enter the amounts representing all supportive services included in the project and provide on a separate sheet the name and budget amount of each such service. If TH funds will be used for any such services, identify the services, the TH amount, and provide a cost breakdown, including the salaries of the providers, by position.

Line 13. Employment Assistance: If the project includes an employment assistance program, enter the amounts representing the costs of carrying out the employment assistance program for the residents of the transitional housing. Provide a cost breakdown for the program, including the positions and salaries of the residents to be employed in operating and maintaining the transitional housing, the costs of transporting residents to other places of employment outside the transitional housing, and any other costs associated with the program. Show salaries by position; **do not** identify residents by name.

Line 14. Total Expenses: For each year, enter the total of lines 5-13. The amount entered for Total Expenses must equal the amount entered for Total Resources on line 4c for each corresponding year.

Start Date / End Date: In the spaces provided, enter the anticipated start and end dates of each operating year. The start date for the first operating year is the date that the transitional housing is initially occupied by a homeless person for whom TH assistance is provided. If the TH assistance is used to substantially expand services for homeless persons, the start date for the first operating year is the date that expanded services are expected to be first provided to residents of the transitional housing.

CHECKLIST: The required information described in these Part 3 instructions should be enclosed behind the Part 3 form in the order it is described. Label each enclosure. To ensure that the necessary information is submitted, place check marks in the boxes below when the information is assembled in order and enclosed behind the form. Where a listed item does not apply, write "NA" in the box. See Part 3 instructions for more detailed description of these items.

☐ **3.1 Expansion of an Existing Facility or Service:** If TH assistance is being requested to expand an existing facility or service, provide a description of how the expansion meets one or more of the criteria described in section 577.125(a) of the TH regulations.

☐ **3.2 Other Federal Funds:** List the sources, amounts and use of "Other Federal Funds" that are committed for use in meeting the costs of operations, supportive services and/or employment assistance.

☐ **3.3 Non-Federal Cash Contributions:** List the sources, amounts and use of "Non-Federal Cash Contributions" that will be used in meeting the costs of operations, supportive services and/or employment assistance.

☐ **3.4 In-Kind Contributions:** List the value of the material, time and services that will be contributed toward meeting the costs of operations, supportive services and/or employment assistance.

☐ **3.5 Other Anticipated Resources:** List the sources and amounts of anticipated resources that do not meet the documentation standards described in Part 1 of this application.

☐ **3.6 Operating Expenses:** If TH funds are being requested for operating expenses, provide a brief description of each line item expense for lines 5-11, including a breakdown of the individual costs that comprise each of the line item expenses.

☐ **3.7 Supportive Service Expenses:** Provide a listing of the name and budget amount for each supportive service included in the project. If TH funds will be used for the service, identify the service, indicate the TH amount, and provide a cost breakdown, including the salaries of the providers.

☐ **3.8 Employment Assistance:** If TH funds will be used for an employment assistance program, provide a breakdown of costs, including the positions and salaries of the residents to be employed in operating and maintaining the transitional housing, the costs of transporting residents to other places of employment, and any other costs associated with the program. Show salaries by position; **do not** identify residents by name.

Transitional Housing (TH)
Part 4
Ranking Information

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

OMB Approval No. 2506-0000 ()

Name of Applicant

Instructions: Attach sheets to this form providing the required information in the order it is described on this form. Label each attachment. After the information is assembled in order and attached to this form, place check marks in the boxes which appear below.

Points: Each proposal will be assigned points and placed in rank order by HUD based upon the information in this application, including the information requested below. (Reference Section 577.215) A proposal can receive a maximum of 1000 points. (See the Notice of Funds Availability for the point distribution.)

4.1. Applicant Capacity: HUD will consider the applicant's capacity to carry out activities and programs relating to the homeless.

☐ **The information on applicant capacity requested below is attached in the order requested.**

Provide the following information, as applicable:

a. The nature and extent of the experience of the director or project manager (responsible for implementing this proposal) in the development and operation of housing and supportive services. Provide relevant educational background, work experience, including length of work experience, the breadth and scope of duties and responsibilities, size of facilities (e.g., the numbers of persons served, budget size, number of staff supervised and the number of programs or program elements).

b. The experience of the applicant's Board of Directors, staff and volunteers in the administration, management and operations of housing and supportive services. Describe the particular skills or services provided by board members, staff and volunteers to the facility. Applicants who are governmental entities need only submit information on paid staff and volunteers who will be involved in the project.

c. The name and address of supportive services providers. For each service provider listed, describe the provider's experience and capacity in administration, management, and operations of the supportive service that will be provided. State whether there will be any full-or part-time residential supervisor to provide or supervise the provision of supportive services to residents. Reference: section 577.210(b)(1)

4.2. Innovation: HUD will consider the innovative quality of the proposal in providing housing and supportive services in a manner that facilitates the residents' transition to independent living.

☐ **The information on innovation requested below is attached in the order requested.**

Provide:

a. A description of the aspects of the proposal that are innovative; and

b. An explanation of how this innovation will achieve the goal of independent living for the residents.

4.3. Need for Transitional Housing: HUD will award points based on the extent to which this proposal specifically addresses an unmet need for the proposed transitional housing.

☐ **The information on need requested below is attached in the order requested.**

Provide:

a. A description of the need for the type of housing and supportive services being proposed. The description should include an estimate of the number of homeless to be served who need the proposed type of housing and supportive services, the number who are now receiving the proposed type of housing and supportive services, and the basis or source used for making these estimates, e.g., the Comprehensive Homeless Assistance Plan (CHAP) or other local surveys;

b. A description of how the proposal relates to serving the unmet need for housing and supportive services; and

c. The method (e.g., outreach, referrals, existing shelter network) for selecting residents for the housing and services.

4.4. Delivery of Supportive Services: HUD will award points based on the quality and comprehensiveness of supportive services. In assessing quality and comprehensiveness, HUD will look at the extent to which supportive services meet residents' unmet needs, relate to the goal of moving residents to independent living, and are coordinated with or use other appropriate services.

The information on supportive services requested below is attached in the order requested.

☐ Describe:

a. The processes used to evaluate residents' unmet needs for the supportive services and to ensure that residents receive the appropriate supportive services toward the goal of achieving independent living;

b. The supportive services and how they relate to the unmet needs of the residents and the goal of residents' achieving independent living;

c. The extent to which the services residents receive are comprehensive; and

d. The extent to which existing services available in the state and/or locality are utilized and the system used for coordinating with those services.

4.5. Excess Match: HUD will consider the extent to which the applicant will exceed the required match. (The matching requirements are described in section 577.130 of the regulations.)

HUD will utilize the information provided in other parts of this application form to determine the extent of the applicant's match beyond that required.

4.6. Cost Effectiveness: HUD will consider the extent to which the applicant's proposed costs in acquiring or rehabilitating housing and in operating a facility and providing services (as defined in his proposal) are (a) reasonable in relation to the rehabilitation to be performed, the property to be acquired, and the services to be provided and (b) effective in accomplishing the purposes of the proposal.

In assigning points for cost effectiveness, HUD will evaluate the information submitted in this application which relates to cost effectiveness. In addition, if this proposal requests acquisition and/or rehabilitation assistance, HUD will consider the timeliness of the proposal based upon the completion of specific milestones.

☐ **The information on milestones requested below is attached. [If the proposal does not request Transitional Housing assistance for acquisition or rehabilitation, write "NA" (not applicable) in the box.]**

Submit the following information showing the number of days from the award until each of these milestones will occur:

a. Closing on the purchase of the structure or executing a lease for the facility;

b. Rehabilitation started;

c. Rehabilitation completed;

d. Initial occupancy (include phases); and

e. Supportive services start date.

4.7. Employment Assistance Program: HUD will consider whether the Transitional Housing project will have an employment assistance program and to what extent the program meets residents' needs and is coordinated with other such programs in the locality.

☐ **The information on the employment assistance program requested below is attached in the order requested.** [If the transitional housing will not have an employee assistance program, write "NA" (not applicable) in the box. If the applicant is requesting transitional housing funds for an employee assistance program and the program is described in part 2 of this application, the applicant may cross-reference material supplied in that section.]

Describe:

a. The on-site and off-site (including location and means of transportation) employment and job training opportunities available to residents;

b. The process for selecting residents for the employment assistance program and procedures used to match residents' needs with employment opportunities; and

c. The extent to which employment assistance programs available in the state and/or locality are utilized and the system used for coordinating with those services.

4.8 Site Control: HUD will consider the extent to which an applicant has control of the site for the proposed project.

☐ **The information on site control requested below is attached, as applicable. One or more of the items may not apply to your proposal.** For each structure proposed for Transitional Housing assistance (acquisition, rehabilitation, new construction, operating costs, supportive services, employment assistance program), submit evidence, as applicable:

a. If the site is under the control of the applicant, submit one of the following forms of documentation: (1) deed or other proof of ownership, (2) executed contract of sale, (3) lease agreement, or (4) option agreement to purchase or lease [option must, at a minimum, be for a six month period].

If the structure to be used for housing is a leased structure, submit a description of how the applicant will ensure that the facility will be operated as a facility for the homeless for not less than ten years from the date of initial occupancy.

b. If the site is to be acquired from a public body, submit evidence that the public body (1) possesses clear title or an option to purchase or lease and (2) has entered into a legally binding written agreement to convey the site to the applicant upon its notification of funding under the program.

c. If the site is to be acquired by the public body through the eminent domain process (action must be completed within a year of the date of application), submit (1) evidence that the unit of general local government is prepared to use its authority of eminent domain and (2) a copy of the land disposition agreement or a resolution from the public body conveying, or committing to convey, site control to the applicant.

d. If the site is under negotiation,

Either submit a certification [see example below] indicating (1) the name of the party with whom the site control is being negotiated, (2) the address (street, city, state) of the site under negotiation, and (3) that site control is expected no later than six months after notification of award;

Or submit other evidence documenting that site control will be achieved and the date by which site control will be achieved. Reference: section 577.210(b)(8).

Example: Recommended form of certification

(Applicant) certifies that it is currently engaged in negotiations with (name and address of owner, realtor, etc.) for the purpose of gaining control of the site(s) at (address of site). We expect site control to be achieved by (date , no later than 6 months after notification of grant award).

(Signature, title, and date)

Transitional Housing (TH)
Part 5
Additional Documentation

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

OMB Approval No. 2506-xxxx ()

Name of Applicant

Instructions: Attach sheets to this form providing the required information in the order it is described on this form. Label each attachment. To ensure that the necessary information is submitted, place check marks in the boxes which appear below when the information is assembled in order and attached to this form. Item 5.4. may not apply to your proposal. In such a case, write "NA" (not applicable) in the box.

☐ **5.1. Certification of Consistency with Comprehensive Homeless Assistance Plan:** All applicants are required to provide the following special certification from the appropriate State or local government official:

I, (name and title), authorized to act on behalf of the (State, city or county), do certify that the activities proposed by (name of applicant) are consistent with the Comprehensive Homeless Assistance Plan submitted by the (State, city or county) on (date), having addressed the need for assistance and the manner in which such assistance will enhance and complement available services as referenced in such a plan.

(Signature, title and date)

Reference: section 577.210(b)(7).

☐ **5.2. Evidence of Consistency with Local Plans:** Submit a written statement, on official stationery, from the unit of general local government in which the project is proposed to be located indicating that the proposed uses of the structure and the site are not inconsistent with any plan of the local government which may have an effect on the use of the structure or the site.

Alternatively, if a written statement has not been provided, submit evidence demonstrating that a written request was made to the unit of local government for the statement and the statement has not been received within 30 days after the request. Reference: section 577.210(b)(8).

☐ **5.3. Evidence of Permissive Zoning:** Submit one of the following forms of evidence for each site:

a. A written statement from the unit of general local government in which the project is proposed to be located or copy of an official document showing that the proposed use of the site (give the property address) is permissible under applicable zoning, ordinances and regulations; or

b. A written statement from the applicant describing the proposed actions necessary to make the use of the site (give the property address) permissible under applicable zoning ordinances and regulations, with evidence that there is a reasonable basis to believe that the proposed zoning actions will be completed successfully and within four months following submission of the application. Reference: section 577.210(b)(9).

☐ **5.4. Evidence of Environmental Review:** State or local government applicants must submit a letter of participation agreeing to assume the Federal responsibility for assessing the environmental effects of the proposed facility in accordance with section 104(g) of the Housing and Community Development Act of 1974, the procedural provisions of NEPA, and the regulations contained in 24 CFR Part 58. Reference: section 577.210(c).

[FR Doc. 90-3426 Filed 2-13-90; 8:45 am]
BILLING CODE 4210-29-C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-919-00-4830-02-ADVB]

Fairbanks Support Center; Northern Alaska Advisory Council

The Northern Alaska Advisory Council will hold a public meeting Mar. 15, 1990, at BLM's Fairbanks Office Building, 1150 University Ave., Fairbanks, Alaska. The meeting will begin at 8:30 a.m., public comment will be taken from 1 to 2 p.m., and the meeting will end at 5 p.m.

Topics of discussion will be (1) Arctic District resource issues, (2) wetlands policy (3) future direction of the mining program in northern Alaska, (4) the Norton Sound Habitat Management Plan, and (5) Fort Egbert centennial plans, and (6) a cooperative agreement on Wild & Scenic River management.

For information contact the Public Affairs Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709, telephone (907) 474–2231.

Dated: February 7, 1990.

Billy E. Butts,

Acting Designated District Manager, Northern Alaska Advisory Council.

[FR Doc. 90–3481 Filed 2–13–90; 8:45 am]

BILLING CODE 4310–84–M

[ID-943-90-4212-13; IDI-23782]

Order Providing for Opening of Public Land, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: This order opens lands received in a private exchange to the land, mining and mineral leasing laws.

EFFECTIVE DATE: March 15, 1990.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, (208) 334–1735.

1. In an exchange made under the provisions of section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been reconveyed to the United States:

Boise Meridian

T. 14 S., R. 13 E.,
Sec. 13, SW¼SW¼ (above high waterline);
Sec. 14, NE¼SE¼ and S½SE¼ (all above high waterline);
Sec. 23, NE¼NE¼, NE¼SW¼, NE¼NW¼, S½NW¼, N½NW¼SW¼ and N½S½NW¼SW¼ (all south and east above high waterline);
Sec. 24, NW¼NW¼.

The areas described aggregate 272.16 acres in Twin Falls County.

2. At 9 a.m. on March 15, 1990, the lands described above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. all valid applications received at or prior to 9 a.m. on March 15, 1990, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on March 15, 1990, the lands will be opened to the location and entry under the United States mining laws and to applications and offers under the mineral leasing laws Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: February 6, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90–3451 Filed 2–14–90; 8:45 am]

BILLING CODE 4310–GG–M

[ID-943-90-4212-13; IDI-21501]

Order Providing for Opening of Public Land, Idaho.

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: This order opens lands received in a private excange to the land, mining and mineral leasing laws.

EFFECTIVE DATES: March 15, 1990.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, (208) 334–1735.

1. In an exchange made under the provisions of section 206 of the Act of October 21, 1976, 90 State. 2756, 43 U.S.C. 1716, the following described lands have been reconveyed to the United States:

Boise Meridian

T. 8 N., R. 35 E.,
Sec. 22, E½NE¼, NW¼NE¼ and N½NW¼;
Sec. 23, S½NW¼ and NE¼SW¼.
T. 9 N., R. 35 E.,
Sec. 1, lots 1 to 3, inclusive. S½NE¼, SE¼NW¼, NE¼SW¼ and NW¼SE¼.
Sec. 34, S½.
T. 9 N., R. 36 E.,
Sec. 6, lots 1 and 2 and S½NE¼
T. 13 N., R. 39 E.,
Sec. 15, NE¼SE¼;
Sec. 16, W½NW¼NE¼, NW¼ and SE¼SW¼;
Sec. 21, E½NW¼;
Sec. 22, W½SW¼, SE¼SW¼ and SW¼SE¼

The area described aggregate 1,620.16 acres in Clark and Jefferson Counties

2. At 9 a.m. on March 15, 1990, the lands in paragraph 1 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on March 15, 1990, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on March 15, 1990, the lands described in paragraph 1, except those described in paragraph 4 below, will be opened to location and entry under the United States mining laws and to applications and offers under the mineral leasing laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

4. All minerals in the following described lands ahve been reserved and therefore remain closed to entry:

Boise Meridian

T. 13 N., R. 39 E.,
Sec. 16, SE¼SW¼;
Sec. 22, NW¼SW¼, SE¼SW¼ and SW¼SE¼.

Dated: February 5, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90-3452 Filed 2-13-90; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-90-4212-13; IDI-22486, IDI-23536, IDI-25586]

Order Providing for Opening of Public Land, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: This order opens lands received in three private exchanges to the land, mining and mineral leasing laws.

EFFECTIVE DATE: March 15, 1990.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, (208) 334-1735.

1. In three exchanges made under the provisions of section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been reconveyed to the United States:

Boise Meridian

(IDI-22486)
T. 14 S., R. 30 E.,
Sec. 16, N½.
(IDI-23536)
T. 6 S., R. 16 E.,
Sec. 16, N½.
(IDI-25586)
T. 7 N., R. 37 E.,
Sec. 28, NE¼SW¼.
T. 8 N., R. 39 E.,
Sec. 18, SE¼NW¼.

The areas described aggregate 720 acres in Oneida, Fremont and Lincoln Counties.

2. At 9 a.m. on March 15, 1990, the lands will opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

All valid applications received at or prior to 9 a.m. on March 15, 1990, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on March 15, 1990, the lands will be opened to location and entry under the United States mining laws and to applications and offers under the mineral leasing laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: February 5, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90-3453 Filed 2-13-90; 8:45 am]

BILLING CODE 4310-GG-M

Geological Survey

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project, Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Earthquake Report.

Abstract: Respondents supply information on the effects of the shaking from an earthquake—on themselves personally, buildings and their effects, other man-made structures, and ground effects such as faulting or landslides. This information will be used in the study of hazards from earthquakes and used to compile and publish the annual USGS publication "United States Earthquakes".

Bureau Form Number: 9-3013.

Frequency: After each earthquake.

Description of Respondents: Federal, state, and local employees; and, the general public.

Estimated Completion Time: 6 minutes.

Annual Responses: 13,500 Federal; 1,500 state, city and volunteer.

Annual Burden Hours: 150 hours.

Bureau Clearance Officer: Geraldine A. Wilson, 703-648-7309.

Dated: December 21, 1989.

Benjamin A. Morgan,

Chief Geologist.

[FR Doc. 90-3415 Filed 2-13-90; 8:45 am]

BILLING CODE 4310-31-M

Office of Surface Mining Reclamation and Enforcement

Administrative Record for State and Federal Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior Department.

ACTION: Notice; correction.

SUMMARY: This document corrects a notice notifying the public of a change in OSM's current practice of maintaining the administrative record both in OSM's Field Office and in its headquarters in Washington, DC, for each State regulatory and abandoned mine land reclamation program and each Federal regulatory program (55 FR 669).

The following corrections are made in FR Doc. 90-345 appearing on pages 669-670 in the issue of January 8, 1990:

1. On page 670, in the first column, first paragraph "Virginia, North Carolina:" is corrected to read "Virginia:"
2. On page 670, at the top of the second column, "Tennessee:" is corrected to read "Tennessee, North Carolina:"

Dated: February 9, 1990.

Nancy C. Garrett,

Assistant Director, Budget and Administration.

[FR Doc. 90-3447 Filed 2-13-90; 8:45 am]

BILLING CODE 3410-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-301]

Certain Imported Artificial Breast Prostheses and the Manufacturing Processed Therefor; Commission Decision Not to Review an Initial Determination Terminating Investigation as to Three Respondents on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that

the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 9) issued by the presiding administrative law judge (ALJ) terminating the above-captioned investigation as to three respondents. The ID grants the joint motion of complainant Amoena Corporation (Amoena) and respondents Coloplast A/S, Coloplast Industrie S.A.R.L. (Coloplast), Hemispheres Marketing Company, Ltd. (Hemispheres), and Jobst Corporation (Jobst) to terminate the investigation with respect to those three respondents, on the basis of a settlement agreement.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1105. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 210.53 (19 CFR 210.53).

On December 22, 1989, complainant and respondents Coloplast, Hemisphere, and Jobst filed a joint motion to terminate the investigation with respect to those three respondents, on the basis of a settlement agreement. The Commission investigative attorney filed a public interest statement supporting the motion to terminate the investigation. On January 9, 1990, the ALJ issued an ID granting the motion, and terminating the investigation with respect to the three settling respondents. No petitions for review or agency or public comments were received.

By order of the Commission.

Issued: February 6, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–3455 Filed 2–13–90; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 377–TA–242]

Certain Dynamic Random Access Memories, Components Thereof and Products Containing the Same; Notice of Issuance of Limited Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order in the above-captioned investigation prohibiting the unlicensed importation of certain dynamic random access memories (DRAMs) manufactured abroad by Samsung Company, Limited, and Samsung Semiconductor & Telecommunications Co., Limited (collectively, Samsung), according to a process that infringes certain claims of U.S. Letters Patent 4,043,027 (the '027 patent). The order covers infringing DRAMs, whether in the form of single-units or incorporated into a carrier of any form, mounted on a circuit board of any configuration, or contained in certain downstream products (computers, facsimile equipment, telecommunications switching equipment and printers) manufactured by Samsung.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1105.

SUPPLEMENTARY INFORMATION: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337, as amended by section 1342 of the Omnibus Trade and Competitiveness Act of 1988) and in Commission interim rules 210.56 and 210.58 (53 FR 33070 (Aug. 2, 1988)), to be codified at 19 CFR 210.56 and 210.58).

The subject investigation was conducted to determine, *inter alia*, whether there is a violation of section 337 of the Tariff Act of 1930 in the importation or sale by Samsung of certain dynamic random access memories (DRAMs). The complainant, Texas Instruments, Inc. of Dallas, Texas, had alleged, *inter alia*, that Samsung is unlawfully importing DRAMs that infringe claims 12–15 and 17 of the '027 patent.

On July 12, 1988, the United States Court of Appeals for the Federal Circuit issued a decision reversing and vacating portions of the Commission's original determination in this investigation, and remanding the investigation to the Commission for further proceedings consistent with the court's decision. *Texas Instruments, Inc.* v. *U.S. International Trade Commission*, No. 87–1627 (Fed. Cir., July 12, 1988) (unpublished). The Commission, in turn, remanded the investigation to an administrative law judge (ALJ) for further proceedings and issuance of an initial determination (ID) on the questions of obviousness and infringement of the '027 patent. See 53 FR 39159 (Oct. 5, 1988).

On March 29, 1989, the presiding ALJ issued a final ID concerning the obviousness and infringement issues. The ALJ found that (1) claims 12–15 and 17 of the '027 patent are not invalid as obvious under 35 U.S.C. 103; (2) Samsung's 64K, 128K, and 256K DRAMs infringe claims 12, 14, 15, and 17 of the '027 patent; and (3) Samsung's 256K DRAM infringes claim 13 of the '027 patent, but Samsung's 64K and 128K DRAMs do not infringe claim 13.

The Commission determined not to review the ID, and requested the parties and interested members of the public to file written submissions on remedy, the public interest, and bonding. 54 FR 22633 (May 25, 1989). Complainant, the Samsung respondents, and the Commission investigative attorney filed briefs. No other submissions were received. Having considered these submissions, the Commission made its determination regarding remedy, the public interest, and bonding.

Copies of the Commission's limited exclusion order, the Commission Opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: February 7, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–3456 Filed 2–13–90; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

William A. Barclay, M.D.; Denial of Application

On May 25, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to William A. Barclay, M.D., (Respondent), proposing to deny his application for registration dated September 26, 1988. The Order to Show Cause alleged that Dr. Barclay's registration would be inconsistent with the public interest. The Order to Show Cause was sent via registered mail to the address listed on Dr. Barclay's application, 505 Rustic Lodge Road, Indiana, Pennsylvania 15701. It was received and signed for by Pam Barclay on June 15, 1989. Title 21 of the Code of Federal Regulations, Section 1301.54(a) requires the Respondent to file a request for a hearing within 30 days of the date of receipt of the order. Section 1301.54(d) provides that failure to timely file a request for a hearing acts as a waiver of the hearing. It has been more than 30 days since the receipt of the order and Respondent has not filed a request for a hearing. The Respondent is therefore deemed to have waived his opportunity for a hearing before an administrative law judge. Pursuant to 21 CFR 1301.57, the Administrator now issues his final order in this matter, based on the information contained in the investigative file.

In the early part of 1985, Respondent began to administer Dilaudid, a Schedule II controlled substance, to his wife, two to three times a day along with Valium, for back pain. On March 12, 1985, Respondent's wife died. When interviewed by investigators, Respondent admitted that he had been prescribing Dilaudid for his wife prior to her death and also to his two daughters and his son. Respondent also admitted that he, himself, was taking the same amount of Dilaudid. All three children voluntarily committed themselves to a hospital for drug rehabilitation. Respondent obtained the Dilaudid by issuing prescriptions in a former patient's name, and having the patient fill the prescription and return to drugs to Respondent.

On May 6, 1985, Respondent was arrested and searched. On his person was a container filled with 100 Dilaudid tablets. Respondent was subsequently charged by information with, *inter alia*, prescribing a controlled substance not in good faith in the course of a professional practice, obtaining Dilaudid by misrepresentation, and involuntary manslaughter. The manslaughter charge alleged that as a direct result of acts performed in a reckless or grossly negligent manner, he caused the death of Sally Barclay by over-prescribing Dilaudid and failing to provide her with proper medical care. On October 17, 1985, Respondent pled guility to involuntary manslaughter. Respondent also pled guilty to the separate charge of overprescribing Dilaudid and recklessly engaging in conduct which placed Sally Barclay in danger of death or serious bodily injury.

On May 10, 1985, the Pennsylvania State Medical Board suspended Respondent's medical license after finding that Respondent's licensure posed an immediate and clear danger to the public health and safety.

On January 10, 1986, the Pennsylvania State Medical Board suspended Respondent's medical license for a period of five (5) years beginning on May 10, 1985 and ending on May 10, 1990.

On May 23, 1988, the Pennsylvania State Medical Board reinstated Respondent's license subject to certain terms and conditions, including a continuing restriction on authority to handle Schedule I, II, and III controlled substances. The 1988 Board order also contained the following restrictions on Respondent's ability to practice medicine:

1. Respondent is not permitted to perform surgery of any type;

2. Respondent is not permitted to prescribe to any person any drugs listed in Schedules I, II and III;

3. Respondent must continue therapy for drug addiction with the Physicians Education Network and Narcotics Anonymous;

4. Respondent is to refrain from the personal use of addicting drugs and to submit urine screens on a regular basis to ascertain whether he is using addicting drugs. These test shall be no less frequent than once a week;

5. Respondent is to continue working with the impaired physician's program of the Pennsylvania Medical Society and is to complete all the requirements set forth by the direct of that program.

21 U.S.C. 823(f) states the factors that must be considered before an application for registration may be denied. They are:

1. The recommendation of the appropriate licensing board or professional disciplinary authority.

2. The applicant's experience in dispensing or conducting research with respect to controlled substances.

3. The applicant's conviction record under Federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

4. Compliance with applicable state, Federal, or local laws relating to controlled substances.

5. Such other conduct which may threaten the public health and safety.

Respondent has been convicted of a crime involving controlled substances. This crime resulted in the death of an individual. The appropriate state licensing authority revoked Respondent's license to practice medicine in the State of Pennsylvania and although Respondent has since regained that license, he is still significantly limited by state action in his use of controlled substances. Respondent has demonstrated other conduct which may threaten the public health and safety by supplying Dilaudid to his children to the extent that they became addicted themselves and needed detoxification. The Administrator notes that Dilaudid is a Schedule II controlled substance, a narcotic, and highly addicting. Respondent's use of this drug has been irresponsible, criminal and has caused significant harm. The Administrator finds no reason to believe that such harm will be lessened or abated if Respondent is again allowed to handle these drugs. The Administrator, therefore, finds that the Respondent's registration would not be in the public interest.

Accordingly, having concluded that there are lawful bases for the denial of Respondent's application, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that Respondent's application for registration dated September 26, 1988, be, and hereby is, denied.

This order is effective February 14, 1990.

Dated: February 7, 1990.

John C. Lawn,

Administrator.

[FR Doc. 90-3437 Filed 2-13-90; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-2]

Robert G. Crummie, M.D.; Revocation of Registration

On December 9, 1987, the Deputy Assistant Administrator, Office of Diversion Control of the Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert G. Crummie, M.D. (Respondent)

of 6245 Cliffdale Road, Fayetteville, North Carolina 28304. The Order proposed to revoke DEA Certificate of Registration AC2497825 and deny any pending applications for renewal, alleging that Respondent's continued registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f).

Respondent, acting pro se, requested a hearing by letter dated January 5, 1988. The matter was docketed before Administrative Law Judge Mary Ellen Bittner. On January 12, 1988, Judge Bittner issued an Order for Prehearing Statements directing the Government to file its prehearing statement by February 5, 1988, and Respondent to file his prehearing statement by February 26, 1988. The Government timely filed its prehearing statement; Respondent did not. He sent a letter to the administrative law judge and one to the Government, dated March 14, 1988, and March 16, 1988, respectively. Neither letter contained all of the information which was to have been submitted in the prehearing statement. On March 30, 1988, Respondent retained an attorney who filed a motion for an extension of time within which to file a prehearing statement. Respondent's request was granted and a prehearing statement was timely filed on April 1, 1988. Judge Bittner issued a prehearing ruling on April 22, 1988, which set the hearing date for August 10, and 11, 1988, in North Carolina. Judge Bittner also directed Respondent to identify those witnesses that he intended to call to testify at the hearing and a summary of their testimony by May 25, 1988. The prehearing ruling specifically stated that "[n]o additional testimony is likely to be admitted over objection." Respondent was not listed as a witness, although he was subsequently permitted to testify.

The hearing was held on August 10, 1988, in Winston-Salem, North Carolina and on December 6, and 7, 1988, in Washington. Judge Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law and decision on May 31, 1989. Respondent requested and was granted an extension of time within which to file his exceptions. His exceptions were filed on July 7, 1989. On July 17, 1989, Respondent sent a letter to the clerk indicating that he would be proceeding pro se and requested another extension of time within which to file a second set of exceptions and objections to Judge Bittner's opinion. Judge Bittner denied Respondent's request. On August 3, 1989, Respondent filed a motion for the administrative law judge to be removed from ruling upon future motions and a motion for the Administrator to reconsider. On August 4, 1989, Judge Bittner transmitted the entire record of these proceedings, including the aforementioned exceptions and motions, to the Administrator. The Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

Respondent is a psychiatrist who conducts a private practice at the Cliffdale Clinic in Fayetteville, North Carolina. The clinic is located in a building that also serves as Respondent's private residence. On July 22, 1987, a supervisor of the Cumberland County Sheriff's Office, Bureau of Narcotics, in Fayetteville, received information from a county law enforcement officer who advised that he, along with another officer, observed what they believed was a marijuana plant on Respondent's property. The narcotics supervisor accompanied the two officers to an area near Respondent's clinic and, with the aid of a telescope, saw a plant that they concluded was marijuana. As a result, a search warrant was executed on July 22, 1987. The officers found 45 marijuana plants and stems growing in flowerpots in an area outside Respondent's bedroom. This area is enclosed by a privacy fence and is accessible by only one door which leads into and out of Respondent's bedroom. The officers also removed four marijuana plants growing in the ground outside a room that appeared to be an office and one marijuana plant growing in a tomato garden in Respondent's yard.

Marijuana was also found inside Respondent's clinic/residence. In Respondent's bedroom closet, officers removed two paper grocery bags containing marijuana leaves and two tobacco pouches each containing small amounts of marijuana. At the hearing, the narcotics supervisor testified that one method for curing marijuana is to put leaves in a paper bag in a dark cool area. In his opinion, one of the paper bags appeared to have cured longer than the other.

The marijuana plants, stems and leaves were photographed and collected. The photographs were admitted as evidence at the hearing. A sample of the plants found, along with the entire contents of the two paper bags and two tobacco pouches, were sent to the North Carolina Bureau of Investigation for testing. The laboratory results revealed that one paper bag contained 22.4 grams of marijuana, the other paper bag contained 15.3 grams, the tobacco pouches contained 5.9 grams of marijuana, and the sample of the plants tested contained 17.4 grams of marijuana.

On or about July 22, 1987, Respondent was arrested by the Cumberland County Sheriff's office and charged with maintaining a dwelling for keeping and selling drugs, possession of marijuana, and manufacturing marijuana. The charges were dismissed on August 11, 1988, because of the state's refusal to furnish the name of a confidential informant.

During the hearing, Respondent testified that he never used, possessed or manufactured marijuana. He claimed that someone else brought the marijuana onto his premises. In support of his claim, Respondent introduced evidence to show that he has spoken against the use of marijuana, both publicly and in sessions with his patients; that individuals who had been to the clinic many times had never seen marijuana on the premises; that on July 4, 1987, Respondent hosted his annual pig-picking and there was no evidence that any guest observed marijuana on the premises; that many individuals had access to the clinic and its grounds; and, that various individuals bore him ill-will.

The Administrator has considered Respondent's evidence and concludes that it is speculative and unpersuasive. The Administrator further finds that the testimony of the narcotics supervisor and the photographs of the marijuana plants and leaves removed from Respondent's premises clearly establish that marijuana was found growing on Respondent's property and that marijuana leaves were found in his bedroom closet.

The Administrator further finds that during the Fall 1987, an investigator with the North Carolina Board of Medical Examiners conducted an investigation into Respondent's prescribing practices with respect to Valium, a Schedule IV controlled substance. On September 21, 1987, the investigator interviewed the commander of the Wommack Army Hospital, the head of the hospital's pharmacy department and the hospital attorney. They expressed their concern over the number of benzodiazepines that Respondent had prescribed in comparison to other area physicians. The investigator also conducted a prescription survey in the Fayetteville area.

As a result of the foregoing, the North Carolina Medical Board subpoenaed Respondent's records for twenty-two patients. Both the patient records and

prescription survey results were reviewed. According to the prescription survey, one patient received a prescription from Respondent for 240 dosage units of Valium 5 mg. on July 30, 1987, with two refills. The patient refilled the prescriptions on September 3, 1987 and September 27, 1987. Respondent issued another prescription for 240 dosage units of Valium, 5 mg. on September 29, 1987, just two days after the last refill.

The patient charts also revealed that in some instances, Respondent prescribed Valium in quantities that either exceeded the recommended dosage or recommended time period in the Physicians' Desk Reference (PDR). For the period between September 8 and December 29, 1987, Respondent issued 15 prescriptions for Valium, 10 mg. (1,688 total dosage units) and 10 prescriptions for Halcion (277 total dosage units) to one patient. Thus, in less than a four-month period, this patient received more than 140 mg. of Valium per day. Another patient received prescriptions from Respondent which totalled 840 dosage units of Valium, 10 mg., for the period between January 27, 1988 and March 25, 1988. Excluding in last prescription, this patient received approximately 120 mg. of Valium per day in a two-month period.

According to the PDR, the usual adult daily dose of Valium for the management of anxiety disorders is up to 40 mg. While the PDR notes that patients may require higher doses than those just specified, it further warns that in such cases the dosage should be increased cautiously to avoid adverse effects.

The investigation further revealed that Respondent twice postdated prescriptions for Xanax for one patient; that Respondent continued to prescribe Valium to a patient after being advised that the patient was sharing the Valium with his girlfriend; that according to entries made in the patient chart, one patient received prescriptions for Xanax on four occasions in 1986, while the first recorded office visit was not until January 1987; and that Respondent continued to prescribe Tenuate at the request of his patient, although he believed that the drug was having no effect on the patient.

The Medical Board Investigator reported the results of his prescription survey and review of the patient records to the North Carolina Board of Medical Examiners. On March 12, 1988, the Medical Board interviewed Respondent regarding his prescribing practices with respect to benzodiazepines. On April 7, 1988, the Board sent Respondent a letter which advised that they had some concern that Respondent was not conducting his practice of medicine in accordance with the prevailing and acceptable standards of medical practice in the State of North Carolina. The Board urged Respondent to discontinue his present controlled substance prescribing practices, particularly with respect to benzodiazepines to the extent that they are not consonant with the prevailing and accepted standards of medical practice in North Carolina. Another investigation conducted by the Medical Board revealed that Respondent had reduced the number of prescriptions he issued for Valium and the number of dosage units he prescribed per prescription

In determining whether a registrant's continued registration is inconsistent with the public interest, the Administrator considers the following factors listed in 21 U.S.C. 823(f):

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

The Administrator need not make findings as to all of the factors enumerated above when evaluating each case. Rather, he may give each factor the weight he deems appropriate. In this case, the second, fourth and fifth factors are relevant in considering whether Respondent's registration is inconsistent with the public interest.

The record clearly establishes that marijuana plants and stems were found growing on Respondent's property and marijuana leaves were found in his bedroom closet in violation of both Federal and state laws. The record further shows that Respondent failed to prescribe controlled substances in a careful and prudent manner. He twice postdated prescriptions for Xanax in violation of 21 CFR 1306.05. He continued to prescribe Tenuate to a patient at her request, although in his professional judgment the substance was no longer effective. Further, Respondent prescribed Valium in dosages that far exceeded those recommended. His prescribing practices with respect to Valium were reviewed by the North Carolina Board of Medical Examiners who urged Respondent to discontinue his prescribing practices with respect to benzodiazepines to the extent that they are not consonant with the prevailing and acceptable standards of medical practice in their state. In light of the foregoing, the administrative law judge concluded that there is a lawful basis for the revocation of Respondent's DEA registration and recommended that Respondent's registration be revoked. The Administrator adopts the administrative law judge's recommended findings, conclusions, rulings and decision as his own.

In his exceptions to the administrative law judge's opinion and recommended ruling, Respondent made numerous references to facts not in evidence and attempted to provide additional details regarding evidence in the record. The Administrator will not consider such evidence. With respect to that evidence which was presented at the hearing, but discounted by the administrative law judge, the Administrator finds that the administrative law judge acted properly in determining the weight to be given to the evidence. After careful review of the record in this case, the Administrator finds no merit in the arguments raised in Respondent's exceptions.

The Administrator has reviewed Respondent's motion for an interlocutory appeal, motion to have the administrative law judge removed for bias, prejudice and prosecutorial posture and motion for an extension of time to file another set of exceptions. After careful review of the record, the Administrator again concludes that there is no merit in Respondent's allegations and, therefore, denies each motion. The Administrator concludes that the administrative law judge's evidentiary rulings and findings were proper and consistent with this agency's established procedures and rules. Moreover, the Administrator finds that the record is replete with instances which show that the administrative law judge was not only fair, but extremely lenient, toward the Respondent. The administrative law judge granted Respondent's request for a six week extension of time for the filing of his prehearing statement, when he failed to file any document by the specifically stated deadline. Further, the administrative law judge granted Respondent's request for a continuance of the proceedings after the Government presented its entire case. The administrative law judge also granted Respondent's request for an extension of time to file his exceptions. While

Respondent may not agree with the evidentiary and procedural rulings made by the administrative law judge, the Administrator concludes that the rulings were fair, impartial and proper.

In Respondent's Motion for the Administrator to Reconsider, he expresses his concern that a decision by an administrative law judge is tantamount to a decision by the Administrator and cites cases where the Administrator has concurred with the findings and opinion of the administrative law judge. The Respondent's assessment of this agency's administrative record is clearly erroneous. DEA regulations provide for the orderly taking of evidence and the assembly of a coherent hearing record. The administrative law judge, pursuant to the Administrative Procedure Act and this agency's regulations, presides over the proceeding. Thereafter, the judge, having reviewed the evidence and having observed the demeanor of the witnesses, issues an opinion consisting of recommended rulings, recommended findings of fact and conclusions of law, and a recommended decision. As he has done in this case, the Administrator reviews the entire record, including any exceptions filed by the parties. The Administrator then reaches his own independent decision, adopting or rejecting the judge's recommendations. In reviewing this record, the Administrator finds that the administrative law judge presided in a fair and impartial manner. If she erred, she did so by giving Respondent far too much leeway. She was far more liberal than required by fairness and evenhandedness. Ad hominem attacks will gain Respondent no further advantage. The Administrator denies the Respondent's motion for reconsideration.

Accordingly, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration orders that DEA Certificate of Registration AC2497825, previously issued to Robert G. Crummie, M.D., be, and it hereby is, revoked. He further orders that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective March 16, 1990.

Dated: February 8, 1990.

John C. Lawn,

Administrator.

[FR Doc. 90-3435 Filed 2-13-90; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-91]

Murray J. Walker, Jr., M.D.; Revocation of Registration

On August 23, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Murray J. Walker, Jr., M.D. (Respondent) of 2262 Kalanianaole, P.O. Box 1682, Hilo, Hawaii 96721, proposing to revoke his DEA Certificate of Registration AW1083384, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Francis L. Young. During prehearing proceedings, Respondent raised several issues to be considered. The administrative law judge gave Respondent an opportunity to file a brief, prior to the hearing, in support of his position regarding these issues. Respondent failed to file such a brief. The hearing in this matter was held on April 18 and 19, 1989, in Keaau, Hawaii. During the hearing, Respondent expressly waived the aforementioned issues and therefore, they were not considered by the Administrative law judge or the Administrator.

Following the hearing, although both parties were given the opportunity to file proposed findings of fact, conclusions of law and argument, Respondent failed to do so. On October 4, 1989, the administrative law judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Pursuant to 21 CFR 1316.66, both parties were given 20 days to file exceptions to Judge Young's opinion and recommended ruling. No exceptions were filed and, on November 16, 1989, the administrative law judge transmitted the record in this proceeding to the Administrator. On November 20, 1989, the administrative law judge received a document dated November 14, 1989, from Respondent's counsel. The document was titled "Attorney's Report and Affidavit of Daniel Smith, MD." This document was forwarded to the Administrator on November 20, 1989. On the same date, Government counsel sent a letter to the Administrator urging him not to consider this document because it was not timely filed and because the evidence in the proceeding had already been transmitted to the Administrator. The Administrator agrees with Government counsel and has not considered Respondent's November 14, 1989, document in reaching his decision. The Administrator has considered the rest of the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusoins of law as hereinafter set forth.

The administrative law judge found that during routine monitoring of Schedule II prescriptions on the island of Hawaii in 1981, the Office of the Attorney General, State of Hawaii, discovered that Respondent was issuing an excessive number of these prescriptions. In 1982, an undercover state agent purchased Percodan tablets, a Schedule II narcotic controlled substance, from a patient/associate of Respondent.

During January 1984, another associate of Respondent advised DEA and Hawaii state agents that he had been obtaining prescriptions from Respondent for Percodan, Valium and other controlled substances for no legitimate medical purpose. The individual stated that Respondent personally abused Percodan. Respondent and the individual had an arrangement whereby Respondent would give the individual prescriptions for Percodan. The individual would then have the prescriptions filled and would return at least half of the tablets so obtained to Resondent. In May 1983, the individual entered a drug treatment program in an attempt to overcome his addiction to controlled substances. He blamed Respondent for his drug problem. Respondent was aware that the individual had participated in the drug treatment program, yet continued to prescribe large quantities of controlled substances for the individual for no legitimate medical purpose. While in the treatment program, the individual met a woman, who later visited him on the island of Hawaii. Both received controlled substance prescriptions from Respondent for no legitimate medical purpose. While visiting Hawaii, the woman died of a drug overdose. Because the individual believed that Resondent was responsible for the woman's death, he agreed to cooperate with state agents in an investigation of Respondent.

On January 19, 1984, an undercover agent accompanied the cooperating individual to Respondent's residence, not his medical office. Based on Respondent's attire as well as the conversation which ensued, it was clear that this was a social, rather than a

professional, visit. During this visit, Respondent gave the cooperating individual three prescriptions, one for Percodan, one for Valium and the other for Tuinal, all controlled substances. In addition, Respondent gave the cooperating individual a bottle of codeine-based cough syrup. The administrative law judge concluded that there was no legitimate medical purpose for either the prescriptions or the cough syrup.

During the course of the January 19, 1984, visit, Respondent told the cooperating individual that after the individual had the Percodan prescription filled, Resondent wanted half of the tablets returned to him. Respondent then made arrangements to meet the undercover agent and the cooperating individual in the parking lot of a local pharmacy to receive his half of the Percodan. The undercover agent and the cooperating individual had the Percodan prescription filled at the local pharmacy. The undercover agent then met with Respondent and his wife in the parking lot and gave Respondent 25 Percodan tablets.

On February 2, 1984, the undercover agent returned to Respondent's residence, this time without the cooperating individual. On this occasion, Respondent gave the undercover agent four controlled substance prescriptions written in the cooperating individual's name. These prescriptions were for Tuinal, Percodan, Tranxene and Valium. There was no legitimate medical purpose for these prescriptions.

On February 17, 1984, the undercover agent again went to Respondent's residence without the cooperating individual. On this occasion, both Respondent and his wife appeared to be under the influence of drugs. Respondent gave the undercover agent two prescriptions written in the cooperating individual's name, one for Percodan and the other for Tranxene. There was no legitimate medical purpose for these prescriptions. After givine the undercover agent the prescriptions, Respondent asked the agent to return half of the Percodan. The undercover agent agreed, but never returned the drugs to Respondent. Prior to the undercover agent leaving Respondent's residence, Respondent hit his chest and stated that it pained him to do something that he knew was wrong, in reference to the return of the Percodan to him.

During the course of the investigation, the state agent performed an analysis of the Schedule II prescriptions written by Respondent between January 1983 and July 1984. The review revealed that 48 individuals had each received 20 or more of those prescriptions and 20 people had received prescriptions for over 2,000 dosage units each during that time period. Respondent's wife received 84 Schedule II prescriptions totaling approximately 1,800 dosage units, with many of these prescriptions written in her maiden name. Respondent's Schedule II prescriptions accounted for over 50% of all such prescriptions written on the island of Hawaii during this time period. The administrative law judge concluded that it can be inferred from these statistics, considered in light of the other evidence in the record, that these prescriptions were not written for any legitimate medical purpose.

During an interview conducted by state agents, a former employee stated that he too had obtained controlled substance prescriptions from Respondent for no legitimate medical purpose. The former employee further stated that on approximately four occasions Respondent asked him to return half of the Percodan he obtained pursuant to the prescriptions Respondent had written for him.

The agents also interviewed an individual who stated that she received prescriptions for Preludin and Percodan, both Schedule II controlled substances, from Respondent. She told the agents that every Preludin prescription that she received from Respondent was for her own use, because that was her drug of choice, but every Percodan prescription was filled and the drugs returned to Respondent at his request.

During the course of the investigation of Respondent, the agents discovered that since at least July 1988, Respondent was prescribing large quantities of Anexisa 7.5 mg., a Schedule III narcotic controlled substance, to an individual who was a nurse and had been released from her employment by several hospitals due to her questionable handling of controlled substances. The manufacturer's package insert for Anexisa stated that the total 24 hour dose should not exceed 40 mg. Records at one pharmacy revealed that Respondent often prescribed far in excess of the recommended dosage. Between September 12, 1988 and September 22, 1988, Respondent prescribed the individual 160 tablets of Anexsia 7.5 mg., (1,200 mg.), three times the recommended dosage for that time period. The pharmacy's records also revealed that between October 17, 1988 and October 21, 1988, Respondent prescribed the individual 110 tablets of Anexisa 7.5 mg., (825 mg.), over five times the recommended dosage for that time period. Further, the records revealed that on October 20, 1988, Respondent wrote a prescription for the individual for 40 tables of Anexisa 7.5 mg., (300 mg.), and on the next day, October 21, issued a prescription for 70 tablets of Anexsia 7.5 mg.

The administrative law judge noted in his opinion that the Administrator may revoke a DEA registration and deny any application for such registration if he determines that the continued registration of the registrant would be inconsistent with the public interest. The factors to be considered in determining the public interest are set forth in 21 U.S.C. 823(f). It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of the factors, and give each factor the weight he deems appropriate. See, *Henry J. Schwarz Jr., M.D.*, Docket No. 88–42, 54 FR 16422 (1989); *Neveille H. Williams, D.D.S.*, Docket No. 87–47, 53 FR 23465 (1988); *David E. Trawick, D.D.S.*, Docket No. 86–69, 53 FR 5326 (1988).

The record in this case is replete with instances which cast serious doubt on Respondent's ability to responsibly prescribe, dispense and/or administer controlled substances. For several years, Respondent regularly prescribed highly addictive controlled substances to an individual. Respondent continued prescribing these substances to the individual even after Respondent learned that the individual had participated in a drug treatment program to overcome an addiction which the individual believed was caused by Respondent. Further, on at least two occasions, Respondent issued prescriptions in the individual's name to a third party, while the individual was not present. Respondent prescribed controlled substances to the individual's friend, whom, Respondent knew, had also participated in a drug treatment program. The administrative law judge concluded that none of these prescriptions were written for a legitimate medical purpose. Also, Respondent prescribed Anexsia, a Schedule III narcotic controlled substance, to a patient over a period of several months, often in amounts greatly exceeding the recommended daily dosage. Respondent's history of prescribing controlled substances to presons known to him to be drug abusers, often for long periods of time, for no legitimate medical purpose, constitutes grounds on which Respondent's DEA registration may be revoked.

The administrative law judge also concluded that there is ample evidence in the record to indicate that

Respondent himself suffers from addiction to drugs. Respondent made a habit of prescribing Percodan to several of his "patients" and then asking them to return at least half of the Percodan to him once the prescription was filled. Respondent's addiction and his method of obtaining the drugs he needed constitute such other conduct as may threaten the public health and safety, thereby justifying the revocation of his DEA registration.

The administrative law judge concluded that Respondent's continued registration would be inconsistent with the public interest and that his DEA Certificate of Registration should be revoked. The Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in its entirety. Respondent's long history of prescribing controlled substances for no legitimate medical purpose to addicts and abusers, as well as his own addiction and the circumstances surrounding it, clearly demonstrate that Respondent cannot be trusted to responsibly handle controlled substances. Substances are controlled because they are potentially dangerous and therefore should be handled with extreme care. Respondent has failed to exercise such care and, as a result, has ignored his duties as a health care professional to protect the public health and safety from the illicit use of these drugs.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AW1083384, previously issued to Murray J. Walker, Jr., M.D., be, and it hereby is, revoked, and further orders that any pending applications for registration, be, and they hereby are, denied. This order is effective March 16, 1990.

Dated: February 8, 1990.

John C. Lawn,

Administrator.

[FR Doc. 90-3436 Filed 2-13-90; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974; Establishment of A System of Records

AGENCY: National Science Foundation (NSF).

ACTION: Notice of establishment of a Privacy Act System of Records.

SUMMARY: Notice is hereby given that the Office of Inspector General (OIG) of the NSF is establishing a system of records. This action is necessary to reflect the creation of the OIG in February 1989, and its statutory authorization to perform investigations. The system of records consists of OIG's Investigative Files.

EFFECTIVE DATES: This action is effective upon final publication of the addition of 45 CFR 613.6(c) and 613.6(d) published in proposed form elsewhere in today's issue of the **Federal Register**, unless changes are made in response to comments received from the public. Comments must be received by the contact person listed below on or before March 16, 1990.

ADDRESSES: Interested persons may submit written comments to Linda G. Sundro, Inspector General, Office of Inspector General, NSF, Washington, DC 20550 (202-357-9457).

FOR FURTHER INFORMATION CONTACT: Philip Sunshine, Counsel to the Inspector General, Office of Inspector General, NSF, Washington, DC 20550 (202-357-9457).

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 552a(e)(4), OIG is publishing notice of the establishment of a system of records. The system of records is being established as a result of the 1988 Amendments to the Inpector General Act of 1978 (Public Law 95-452, as amended, 5 U.S.C. app.), which required establishment of an Office of Inspector General at the NSF. The OIG was created in February 1989. Among its statutory duties are investigations relating to programs and operations of the National Science Foundation. The system of records being establihesd consist of the OIG's Investigation Files.

Accordingly, the NSF proposes to establish the following system or records for the OIG:

NSF-52

SYSTEM NAME:

Office of Inspector General Investigative Files.

SYSTEM LOCATION:

Office of Inspector General, National Science Foundation, 1800 G Street, NW., room 1241, Washington, DC 20550.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are involved in investigations by the Office of Inspector General relating to the programs and operations of the National Science Foundation. This includes but is not limited to investigations involving the application for or receipt of grants or contracts from the Foundation.

CATEGORIES OF RECORDS IN THE SYSTEM:

All documents and correspondence relevant to the investigation, all internal staff memoranda, copies of all subpoenas, affidavits, statements from witnesses, transcripts of testimony taken in the investigation and accompanying exhibits, documents and records or copies obtained during the investigation, legal briefs and memoranda, other working papers of the staff and other documents and records relating to the investigation, and opening reports, progress reports, and closing reports.

AUTHORITY FOR MAINTENACE OF THE SYSTEM:

Pub. L. 95-452, as amended, 5 U.S.C. app.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used as follows:

(1) In the event that this system of records maintained by the OIG to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, foreign, state, or local, charged with enforcing or implementing the statute, regulation, rule or order.

(2) Disclosure may be made to federal, state, or local agencies where disclosure is necessary in order to obtain records in connection with an investigation of the OIG.

(3) Disclosure may be made to a federal agency where records in this system of records pertain to an applicant for employment, or to a current employee of that agency where the records are relevant and necessary to an agency decision with regard to the hiring or retention of an employee or disciplinary or other administrative action concerning an employee.

Disclosure may also be made to a federal agency in response to its request in connection with the issuance of a security clearance, the award of a contract, or the issuance of a license, grant, or other benefit by the requesting agency to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

(4) Disclosure may be made to the Office of Personnel Management or the Merit Systems Protection Board (including the Office of the Special Council) of information relevant and

necessary to carrying out their functions.

(5) Disclosure may be made to non-governmental parties where those parties may have information the OIG seeks to obtain in connection with an OIG investigation.

(6) In the event OIG is made aware of allegations of misconduct in science and engineering, disclosure of relevant records may be made by OIG to awardee institutions so that these institutions can conduct inquiries and investigations of misconduct in science and engineering pursuant to the terms of 45 CFR Part 689.

(7) Disclosure may be made when the OIG contemplates that it will contract with private firms for the purpose of collating, analyzing, aggregating or otherwise refining records. Disclosure will also be made to independent auditors who by contract carry out audits on behalf of the OIG. Such contractors will be required to maintain Privacy Act safeguards with respect to such records.

(8) Where parties having the power to subpoena these records, issue a subpoena to the OIG for records in this system of records, the OIG may make such records available to the extent required by law.

(9) In the event the OIG deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Informaiton Act disclosure may be made to the Department of Justice of the Office of the General Counsel of the NSF for the purpose of obtaining their advice.

(10) In the event of litigation where the defendant is (a) any component of the NSF, or any employee of the NSF in his or her official capacity; (b) the United States where the NSF determines that the claim, if successful, is likely to directly affect the operations of the NSF or any of its components or (c) any NSF employee in his or her individual capacity where the Justice Department and/or the OGC in the NSF has agreed to represent such employee, the OIG may disclose such records as it deems necessary to the Department of Justice and/or the OGC in the NSF to enable DOJ and/or OGC to present an effective defense.

(11) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STROING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The OIG Investigative Files consist of automated data and paper records. The paper records (stored in file cabinets) and the automated data are maintained in secured offices in the OIG.

RETRIEVABILITY:

The records are retrieved by the name of the subject of the investigation or by a unique contol number assigned to each investigation.

SAFEGUARDS:

These records are available only to those persons whose official duties require such access. The records are kept in limited access areas during duty hours and in locked offices at all other times.

RETENTION AND DISPOSAL:

The Investigative Files are kept indefinitely.

SYSTEM MANAGER AND ADDRESS:

Inspector General, Office of Inspector General, National Science Foundation, Washington, DC 20550.

NOTIFICATION PROCEDURE:

To determine whether this system of records contains a record pertaining to the requesting individual, write to the system manager at the above address.

RECORD ACCESS PROCEDURES:

See notification procedure above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in this sytem of records should write to the system manager at the address above.

RECORD SOURCE CATEGORIES:

Information in these records is obtained from NSF staff and records, and from non-NSF persons and records, to the extent necessary to carry out OIG investigations authorized by 5 U.S.C. app. Individuals to be interviewed and records to be examined are selected based on the nature of the allegations being investigated.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

This system is exempted from 5 U.S.C. 522a except subsections (b), (c) (1), and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i) under 522a(j)(2) to the extent the system of records pertains to the enforcemnt of criminal laws, and is exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4), (G), (H), and (I) and (F) under 5 U.S.C. 552a(k)(2) to the extent the system of records consists of investigatory material compiled for law enforcement purpose, other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2). These exemptions are contained at 45 CFR 613.6(c) and 613.6(d).

Dated: February 5, 1990.

Charles H. Herz,

General Counsel.

[FR Doc. 90-3372 Filed 2-13-90; 8:45 am]

BILLING CODE 7555-01

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Third Quarter CY 1989; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents at NRC licensees were determined to be abnormal occurrences (AOs) using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). The AOs are described below, together with the remedial actions taken. The events are also being included in NUREG-0090, Vol. 12, No. 3 ("Report to Congress on Abnormal Occurrences: July-September 1989"). This report will be available in the NRC's Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC about three weeks after the publication date of this **Federal Register** Notice.

Nuclear Power Plants

89-8 Significant Deficiences Associated with the Containment Building Recirculation Sump at the Trojan Nuclear Power Paint

The second general AO criterion notes that major degradation of essential safety-related equipment can be considered an abnormal occurrence.

Date and Place: July 1, 1989; Trojan Nuclear Plant, a Westinghouse-designed pressurized water reactor (PWR), operated by Portland General Electric Company and located in Columbia County, Oregon.

Nature and Probable Consequences: During July 1989, significant deficiences were discovered regarding the containment building recirculation sump (sump). The existing condition, based on engineering judgement, represented a

major degradation of essential safety-related equipment which would likely have seriously degraded the ability of the emergency core cooling system (ECCS) to mitigate the consequences of a loss of coolant accident (LOCA) during the recirculation phase of emergency operation. The ECCS is specifically designed to remove residual heat from the reactor fuel rods (i.e., prevent fuel rod melting) should the normal core cooling system fail. Details of the event are as follows.

On July 17, 1989, with the reactor plant in cold shutdown condition (mode 5), a licensee inspection of the sump found that a 3/16-inch wire mesh screen, required by design to be installed on the top of the sump enclosure, was not installed. This inspection was being conducted due to a significant amount of debris that had been previously found within the sump by NRC inspectors and licensee personnel since July 8, 1989. The screen is an important design feature of the sump; therefore, the plant did not conform with required design bases. Subsequent inspections by NRC inspectors and licensee personnel identified other deficiencies, including gaps in the 3/16-inch screen on the side of the sump enclosure, openings through sump walls that were not screened, and additional debris. Based on Trojan records and the physical condition of the debris, it was determined that the damaged and missing sump screens, and some of the debris in the sump, had existed for an extended period (at least one operating cycle, approximately a year, and possibly since intital operation in 1975).

The sump is a large collecting reservoir designed to provide an adequate supply of water with a minimum amount of particular matter to the ECCS during the recirculation phase of a LOCA. The recirculation phase is that portion of the LOCA when injection of water from the refueling water storage tank has been essentially completed, and the ECCS is configured to recirculate water from the sump back to the reactor coolant system. The sump design includes an arrangement of screens, bars, and plates completely surrounding the sump to prevent floating debris and large water-entrained particles form entering the sump. For high density material 'hat passes through this arrangement, there is a settling (low velocity flow) region which is designed to remove the debris prior to it reaching ECCS suction. The smallest screen in this arrangement has a 3/16-inch maximum opening, such that debris that passes into the sump through the 3/16-inch screen is mall enough in dimension to pass through any restriction in the ECCS. Therefore, with themissing and damaged 3/16-inch screens, debris larger than the design bases material could pass into the sump and render portions of the ECCS degraded or inoperable during the recirculation phase of a postulated LOCA.

Further, the debris found inside the sump by NRC inspectors and licensee personnel included piping insulation, pieces of metal wire and fabricated steel, pipe fittings, a bundle of 30 inch-long plastic tie wraps, and weld rod material. Based on the staff's engineering judgment, the debris was of such a size and physical characteristics that it would likely have been transported to the ECCS suction in the sump.

The safety significance of these conditions and a high potential that a problem would occur are best demonstrated by an experience at Trojan in 1980, when an operating ECCS Residual Heat Removal pump seized, and stopped, due to a piece of weld rod lodged between the impeller ring area and casing ring.

The deficiencies (debris plus missing and damaged sump screens) would likely have prevented the ECCS from performing its intended function as required had the equipment actually been called upon during the recirculation phase of a LOCA.

Cause or Causes—The direct cause of the top sump screen not being installed, openings through sump walls not being screened, and gaps in the screens was the failure to acceptably complete the installation of the 3/16-inch screen on the sump enclosure during initial construction. Contributory causes include:

1. Failure to perform adequate surveillance, and provide acceptable procedural guidance for surveillance of the sump's material condition in accordance with requirements of the plant Technical Specifications.

2. Failure to perform an adequate design basis verification by the System Engineers during Design Basis Document walkdowns.

3. Failure of the licensee to comprehensively analyze the issue of sump design based on NRC Generic Letter 85–22 regarding the potential for sump screen plugging due to debris within the containment building.

The direct cause of the debris in the sump was lack of attention to post-work cleanliness requirements and failure of post-work cleanliness inspections to identify the debris. Contributory causes include:

1. Failure to provide adequate procedural guidance for sump cleanliness and associated inspections in accordance with Technical Specifications.

2. Failure of personnel to assure that sump cleanliness inspections were performed in accordance with Technical Specifications.

3. Failure of the licensee to properly address the issue of debris in the sump based on several previous instances where there were indications of debris in the sump area between 1980 and July 1989.

Actions Taken to Prevent Recurrence

Licensee—All installation and operational discrepancies have been corrected. The appropriate screens were installed and/or repaired and debris removed, shortly after the problems were noted. Performance expectations will be reinforced by training of all personnel to assure that individuals are responsible and accountable for post-work clean up with particular emphasis given to areas inside the containment. The outstanding performance of the individual who raised this issue has been recognized, and those who failed to perform to expectations are being dealt with on a case-by-case basis.

The procedures for inspection of the containment and sump were revised to include detailed inspection criteria, and pre-inspection briefings were required to assure understanding of individual responsibilities. Additional training is also to be provided, including the basis for the revised inspection criteria.

An upgrade of the licensee's Design Basis Documentation program is being undertaken that includes additional review to assure complete, accurate system description, and required walkdowns of systems will be performed with adequate engineering and quality assurance personnel under specific management guidance.

Licensee top-level management has instituted organizational changes to improve overall Trojan performance with particular emphasis on problem identification and resolution.

NRC—A special inspection of the circumstances associated with the degradation of ECCS was conducted and documented in Inspection Report 50–344/89–19. This inspection identified violations of NRC requirements, and an Enforcement Conference was held with licensee management on August 24, 1989. The NRC staff will continue inspection of licensee activities to assure that the corrective actions have been implemented and are effective.

On October 5, 1989, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $280,000. The violations were aggregated into a single problem that was categorized as Severity Level II (out of five severity levels in which Severity Levels I and V are the most and least significant, respectively). The base value of a civil penalty for a Severity Level II problem is $80,000. However, the base civil penalty was escalated 250 percent to $280,000 because of licensee poor past performance, numerous missed opportunities for identification and correction of the problems, and the long duration of the sump's inoperability. The licensee has paid the fine in full.

Other NRC Licensees

89–9 Medical Diagnostic Misadministration

The general AO criterion noters that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—May 23, 1989; Abbott Northwestern Hospital; Minneapolis, Minnesota.

Nature and Probable Consequences—A female patient, intended to receive a diagnostic administration, was administered the wrong radiopharmaceutical that resulted in a radiation dose in the therapeutic range. Prior to the date of administration, the patient's physician telephoned the licensee's nuclear medicine department requesting that his patient be given a thyroid scan. The woman, who had been diagnosed as having a thyroid nodule, was to be treated on an outpatient basis. A thyroid scan typically utilizes 300 microcuries of iodine-123 (which would result in a dose to the thyroid of about 5 rads) and is designed to locate a thyroid disorder. (Iodine-123 is accelerator-produced and is not under NRC regulatory jurisdiction.)

When the referring physician telephone the order, a scheduling secretary incorrectly wrote "thyroid iodine-131 caps," rather than "thyroid scan" This may have resulted from a misunderstanding with the physician. A technologist, seeing the order for thyroid iodine-131 caps, assumed the female patient was to receive a whole-body scan, and administered 3 millicuries of iodine-131 to the patient on May 23, 1989. (A millicurie is one-thousandth of a curie; a microcurie is one-millionth of a curie.) The purpose of the whole-body scan is to look for thyroid cancer tissue that has traveled to other parts of the body. Patients who receive such a scan have had their thyroids removed or made "nonfunctional" by therapy. Three millicuries of iodine-131 can damage a normal thyroid glad.

The licensee's chief nuclear medicine technologist discovered the error about 30 minutes after the patient received the iodine-131. The patient was given Lugol's solution to reduce the effects of the iodine on the thyroid, and the patient's physician was notified. The NCR also was notified of the misadministrations by telephone on May 25, 1989, and a written report was submitted on June 6, 1989.

The licensee estimated the patient's thyroid radiation dose to be in the range of 3000 rads. However, the NRC's medical consultant estimated the dose to be 4700 rads. The NRC's medical consultant also observed that the patient would have a 10 percent chance of developing hypothyroidism within two years, and a 25 percent chance in 12 years. He recommended that the patient receive routine testing for thyroid function every four to six months.

Cause or Causes—The licensee did not have adequate procedures to assure that prescriptions were in writing and that dosages were verified before they were administered. As a result, there was an error in communication between the patient's physician and the secretary scheduling the nuclear medicine exam (she listed the wrong isotope on the nuclear medicine schedule). The technologist assumed that a whole-body thyroid scan had been ordered because "iodine-131 caps" was listed on the schedule. The technologist stated that if he had checked the admitting diagnosis, "thyroid nodule," he would have known that iodine-131 was the wrong isotope to use. The hospital had no procedure or requirement that technologists check the admitting diagnosis before giving radiopharmaceuticals to patients.

Action Taken to Prevent Recurrence

Licensee—The hospital established procedures requiring that iodine-131 be given to patients only with the prior approval of those individuals listed on the hospital's NRC license as "authorized" physicians. The licensee also established a procedure requiring a physician to submit a written prescription for the use of iodine-131. In addition, nuclear medicine technologists will review a physician's reason for giving a patient iodine-131 to make sure that the right isotaope is used with the prescribed procedure. They also will make certain that the proper amount of iodine-131 is administered.

NRC—The NRC conducted a special safety inspection of the facility on June 20–21, 1989. No violations of NRC requirements were identified during the course of the inspection. However, the NRC raised concerns about the licensee's procedures. A management meeting was held by telephone on July 18, 1989, to discuss the misadministration and the NRC's concern about the adequacy of the licensee's procedures. The licensee outlined new procedures it had instituted and agreed to add these procedures to its NRC license. The procedure changes included a check with the referring physician prior to administration in cases where the physician requests a specific radiopharmaceutical dose. The licensee also reviewed its nuclear medicine and theraphy program for additional problems that could lead to a misadministration. The procedure modifications were added to the license on November 14, 1989.

89—10 Medical Therapy Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—July 24, 1989; Worcester City Hospital; Worcester, Massachusetts.

Nature and Probable Consequences—On July 24, 1989, the licensee notified the NRC that a misadministration occurred earlier that day when the wrong patient was administered 250 rads (from a cobalt-60 teletherapy unit) to the lumbar/sacral spine. The radiation therapy technician called the right patient's name, but did not confirm the patient's identity with the available photograph. The wrong patient responded and was set up using freckles on his back which were mistaken for the patient's treatment positioning tattoos. When the patient indicated that his set-up wasn't correct, the technician called the Oncology Physician to verify that the required treatment was correct on the patient's chart. The physician verified that the treatment was correct on the chart but did not speak to or examine the patient. The patient was in the therapy department for treatment of his right lung.

The licensee has advised the NRC that no adverse effects are anticipated as a result of the misadministration.

Cause or Causes—The cause is attributed to human error by the satff of the licensee's Radiotherapy Department. The radiation therapy technician had been on vacation and had not previously seen the patient. She did not confirm the patient's identity with the available photograph and did not

recognize the absence of treatment positioning tattoos in the patient's lumbar/sacral spine area. In verifying the correctness of treatment, the Oncology Physician performed a chart review, but did not verify patient identity.

Actions Taken to Prevent Recurrence

Licensee—The licensee's corrective actions included strengthening of their patient identification policies and training of technicians to obtain physician verification of patient set-up before initiating treatment in questionable cases.

NRC—NRC Region I inspectors conducted a special safety inspection on August 28, 1989, of the circumstances associated with the misadministration, and agreed with the licensee's actions to prevent recurrence. No violations of NRC requirements were identified.

89–11 Radiation Overexposure of a Radiographer

One of the AO examples notes that exposure of the whole-body of any individual to 25 rem or more of radiation can be considered an abnormal occurrence.

Date and Place—August 2, 1989; Glitsch Field Services/NDE, Inc.; North Canton, Ohio; the radiation overexposure occurred at a customer's site near the licensee's Erie, Pennsylvania facility.

Nature and Probable Consequences—On August 3, 1989, the licensee notified the NRC that a licensee-trained and qualified radiographer with six years experience may have received a whole-body radiation exposure of 93.4 rem on August 2, 1989, while involved in radiographic operations using a radiography device containing an 87 curie, iridium-192 sealed source. (A radiography device uses a radioactive sealed source to make X-ray-like pictures of welds and heavy metal objects.) The circumstances associated with the radiation overexposure are described below.

After completing a radiograph, the radiographer retracted the source into its shielded position inside the device and surveyed the device and guide tube to verify that the source was fully retracted. He failed, however, to "lock" the source into its shielded position. As a result, while setting up the next radiograph and repositioning the radiography device, the iridium-192 source apparently moved outside its shielded position when the source's crank mechanism rotated. He continued his activities, not knowing that he was working within the radiation field of the unshielded radioactive source. After performing the radiograph, he took the exposed film to a darkroom for development and analysis.

At this time, he checked his pocket dosimeter, a radiation measuring device, and noticed it was offscale (greater than 200 milliroentgen). He reset his dosimeter to zero and continued radiographic operations, completing the remaining planned radiographs even though he reportedly was aware that NRC regulations and licensee procedures require that all work be stopped and immediate notification made when a dosimeter is discovered offscale. The individual later said he believed that his radiography work had been done properly and that the dosimeter had drifted or been jarred offscale. He notified one of the licensee's Assistant Radiation Safety Officers of the offscale dosimeter at 7 a.m., August 2, 1989, several hours after the event.

A TLD (dosimeter) worn by the individual during radiographic operations from July 10, 1989, to August 2, 1989, revealed a cumulative exposure of about 93.5 rem. (The applicable NRC limit for whole-body exposure to a radiation worker is 3 rem per calendar quarter.)

Based on licensee statements, interviews with the involved radiographer and NRC reenactments of the individual's actions during the event, NRC inspectors concluded that the 93.4 rem exposure was valid and localized to the individual's right hip. The majority of the radiation dose (greater than 90 percent) was to the radiographer's right hip, which was as close as two inches from the unshielded source during radiograph preparation. As of December 1989, no significant medical effects have been observed. The radiographer remains under a doctor's care, and an NRC medical consultant continues to monitor the individual.

Cause or Causes—The radiographer failed to lock or otherwise secure the radioactive source into its shielded position. Movement of the radiography device and the rotation of the source crank handle allowed the source to move from its fully shielded position and expose the radiographer to direct radiation. The radiographer also failed to make an adequate radiation survey to ensure the source was inside the shielding before he approached the device.

Actions Taken to Prevent Recurrence

Licensee—For corrective actions, the licensee revoked the radiographer's radiographic certification pending retraining and testing; obtained physician's care for the individual; ordered a drug test (results were negative); and conducted tests of the radiography equipment to rule out a malfunction. The day after the incident, the licensee conducted a two-hour radiation safety training class for radiography personnel in the Erie, Pennsylvania, facility. Refresher safety training was conducted for all of the licensee's radiography personnel.

NRC—The NRC conducted a special safety inspection on August 4 and August 14–15, 1989, at the licensee's Erie, Pennsylvania, and North Canton, Ohio, facilities. During the inspection, the NRC reviewed and reenacted circumstances surrounding the overexposure, verifying that the reported 93.4 rem overexposure was valid. NRC Region III conducted an enforcement conference with the licensee on September 7, 1989, to discuss the event. The licensee agreed to modify its procedures to ensure that sources are locked in the devices and to take disciplinary actions for failure to follow procedures. A Notice of Violation was sent to the licensee on December 27, 1989. No civil penalty was proposed.

89–12 Significant Breakdown and Careless Disregard of the Radiation Safety Program at Three General Electric Manufacturing Facilities

The third general AO criterion notes that major deficiencies in the use of, or management controls for licensed facilities or material can be considered an abnormal occurrence. In addition, one of the AO examples notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—During 1988 and 1989, major deficiencies were identified in the radiation safety program at three facilities in Ohio operated by General Electric (GE) Company's Lighting Business Group. Two of the facilities, the Tungsten Products Plant and the Chemical Products Plant, are in Cleveland, and the third, the Ravenna Lamp Plant, is in Ravenna.

Nature and Probable Consequences—Major deficiencies in control in the NRC-licensed use of dispersible powdered thorium (a naturally-occurring, radioactive alpha-emitting material) were identified at the licensee's facilities. The deficiencies posed a possible threat to plant workers due to potential internal deposition of the thorium.

The licensee uses a thorium compound prepared at the Chemical Products Plant to coat lamp electrodes at the Ravenna plant. The Tungsten

Products Plant produces lamp filaments made from thorium and tungsten. Periodic radiation surveys are required at the facilities to identify any thorium contamination in and around work areas. The licensee is also required to perform surveys and evaluations necessary to control radiation exposures to employees.

NRC inspections in August 1988 and June 1989 determined that the licensee was not performing some of the required contamination surveys or radiation exposure evaluations. Because of these deficiencies, some contaminated areas were not being identified and there were uncertainties in determining employees' exposure to airborne thorium.

The June 1989 inspection identified ten violations of NRC license requirements, some of which were repetitive from earlier inspections. Six violations involved failures to perform various required radiation surveys for surface and airborne contamination due to alpha radiation. Others included failure to initiate cleanup procedures when radioactive contamination was detected above an NRC-specified level, failure to evaluate possible hazards during thorium handling and maintenance activities, failure to evaluate means for reducing radiation exposures when two employees exceeded an NRC-specified action level for exposure to airborne radioactivity in January 1989, and failure to post an area as having a potential airborne radioactivity hazard. The repetitive violations included two for failing to perform surveys or monitoring, one for failing to decontaminate when required, and one for failing to post an airborne radioactivity area.

During preparations for replacement of the ventilating system at Ravenna in August 1989, a licensee contractor found thorium contamination in the room containing the thorium processing equipment. The contamination levels, while low, exceeded the levels specified in the NRC license as requiring decontamination. The contamination apparently occurred when a loss of power for the ventilation system allowed the backflow of air containing thorium into the work area.

Although there were major deficiencies in the licensee's survey and monitoring programs, subsequent bioassay tests of employees have indicated that no GE employee exceeded NRC limits for exposure to thorium.

Cause of Causes—Inadequate management attention to radiation safety provisions and past corrective actions that were not implemented or that were ineffective in resolving the problems were the cause of the existence of problems for extended periods and the repetition of problems. This demonstrated a serious breakdown in management controls of the radiation control program, as well as a careless disregard for NRC requirements.

Actions Taken to Prevent Recurrence

Licensee—Subsequent to the August 1988 and June 1989 inspections, the licensee has revamped its radiation safety programs, emphasized closer supervision at Ravenna by corporate and plant management, and undertaken a major modification of the thorium handling system at the Ravenna plant. The electrode coating was previously performed in a vented hood. The licensee has installed an enclosed glove box system to minimize the possible exposure of workers to airborne thorium. The glove box system includes a new ventilation system which prevents the back flow of thorim contamination into the work area.

As a result of NRC findings on the inadequacy of the licensee's monitoring and exposure assessment, the licensee performed whole-body radiation counts of employees who routinely handled thorium and contract personnel involved in work on the filtering system for the thorium work area at Ravenna. (The whole-body count, conducted by an independent, outside consultant, would determine if there had been any internal depositon of thorium as a result of inhalation or ingestion.) Since a number of licensee workers expressed concerns about the thorium contamination of the Ravenna facility, the licensee provided whole-body counts for any employees who requested them. More than 400 employees and contract workers were given whole-body counts. No GE employees or contract workers at the Ravenna facility showed any evidence of internal depositon of thorium in the whole-body counts. Two GE workers at the Tungsten Products Plant showed possible evidence of low-level internal deposition of thorium. The licensee is currently evaluating the test data and may perform additional bioassay testing.

NRC—As a result of the June inspection findings, the NRC issued a Confirmatory Action Letter on June 2, 1989, documenting the licensee's agreement to take prompt corrective actions to deal with the violations indentified. These actions included performing radiation and contamination surveys, decontamination of any contaminated area, and a daily program for surveying employees using thorium. The licensee also agreed to institute a monthly management audit plan to assure compliance with NRC requirements. The NRC conducted an Enforcement Conference with the licensee on July 12, 1989, to review the inspection findings and to assure that the licensee was taking appropriate actions.

On August 25, 1989, the NRC issued a proposed $24,000 fine for the violations identified in the June 1989 inspection. A breakdown in a licensee's program is usually classified as a Severity Level III violation (out of five severity levels in which Severity Levels I and V are the most and least significant, respectively). The NRC staff determined, however, that the licensee's continued poor performance reflected a careless disregard for NRC requirements, and categorized the violations as Severity Level II, carrying a higher civil penalty. The base value for a Severity Level II violation is $8,000 but the civil penalty was increased 200 percent to $24,000 because previous corrective actions were not timely or comprehensive, the NRC identified all of the violations, and the licensee's past performance was poor. The licensee subsequently paid the fine in full.

Dated at Rockville, MD this 7th day of February 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90-3406 Filed 2-13-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-341]

Detroit Edison Co. and Wolverine Power Supply Cooperative, Inc.; Operation of Fermi-2; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43, issued to the Detroit Edison Company (DECo) and the Wolverine Power Supply Cooperative, Incorporated (the licensees) for the operation of Fermi-2 located in Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action:

The proposed amendment would revise the license to reflect the purchase by DECo of the Wolverine Power Supply Cooperative, Inc.'s interest in Fermi-2.

The proposed action is in accordance with the licensees' application for amendment dated July 24, 1989.

The Need for the Proposed Action:

The proposed change to the license is required in order to accurately reflect legal ownership and responsibility for operation of the Fermi-2 facility.

Environmental Impacts of the Proposed Action:

The Commission has completed its evaluation of the proposed revision to the license. The proposed revision would modify the Operating License to reflect the proposed purchase by DECo of Wolverine Power Supply Cooperative, Inc.'s 11% share in the Fermi-2 facility. No change to the operation or maintenance of Fermi-2 is requested. Therefore, the proposed change does not increase the probability or consequences of an accident, the proposed change does not affect the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact associated with the proposed amendment.

With regard to potential non-radiological impacts, the proposed change to the license does not involve systems located within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action:

Since the Commission has concluded that there is no significant environmental effect that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the requested amendment. This would not permit Fermi-2 to operate as stated in the Operating License.

Alternative Use of Resources:

This action does not involve the use of resources not previously considered in the "Final Environmental Statement Related to Operation of Fermi-2," dated August 1981.

Agencies and Persons Consulted:

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing envronmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on November 1, 1989 (54 FR 46145). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action, see the application for amendment dated July 24, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 8th day of February 1990.

For the Nuclear Regulatory Commission.

John O. Thoma,

Acting Director, Project Directorate III–I, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90–3485 Filed 2–13–90; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Pressurized Water Reactors; Meeting

The Subcommittee on Advanced Pressurized Water Reactors will hold a meeting on March 1, 1990, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Thursday, March 1, 1990—8:30 a.m. until the conclusion of business.

The Subcommittee will review the licensing review basis document being developed by Combustion Engineering for the system 80+ standard design.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat M. El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 7, 1990.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89–3486 Filed 2–13–90; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Pressurized Water Reactors; Meeting

The Subcommittee on Advanced Pressurized Water Reactors will hold a meeting on March 6, 1990, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Tuesday, March 6, 1990—8:30 a.m. until the conclusion of business.

The Subcommittee will continue its discussion and review of the Westinghouse RESAR (SP/90) design.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the

meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat M. El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 7, 1990.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89–3487 Filed 2–13–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 15000033–SC/CivP; ASLBP No. 90–601–01–SC/CivP; E.A. 88–265]

February 7, 1990.

Basin Services, Inc.; Memorandum and Order (Prehearing Conference)

Before Administrative Judges: Charles Bechhoefer, Chairman; Dr. James H. Carpenter; Dr. Richard F. Cole.

In the mattter of Basin Testing Laboratory, Inc. dba Basin Services, Inc.; General Licensee (10 CFR 150.20).

This proceeding concerns the NRC Staff's Order Imposing Civil Monetary Penalty, dated December 6, 1989 (54 FR 51270, December 13, 1989), and Order To Show Cause Why License Should Not Be Suspended, also dated December 6, 1989 (54 FR 51272, December 13, 1989). In accordance with the Atomic Safety and Licensing Board's Memorandum and Order dated January 22, 1990, a prehearing conference in this enforcement proceeding is hereby scheduled for Thursday, March 22, 1990, beginning at 9 a.m., in the Memorial Room, Williams County Courthouse, Williston, North Dakota. If the conference extends beyond 12:30 p.m., it will continue in the Commissioner Room in the same building.

Among matters to be considered at the prehearing conference are the delineation of key issues in the proceeding, the establishment of schedules for discovery, for further prehearing conferences (if necessary) and for evidentiary hearings, possibilities of settlement of some or all issues in the proceeding (consistent with 10 CFR 2.203), and such other matters as may aid in the orderly disposition of the proceeding. As set forth in the Board's January 22, 1990 Memorandum and Order, parties are invited to submit proposed agenda for the conference; the date previously established for submission of the proposed agenda (February 23, 1990) is hereby *modified* to provide for submission of such proposed agenda by Friday, March 9, 1990.

In accordance with 10 CFR 2.715(a), the Board will hear oral limited appearance statements at this prehearing conference. Any person not a party to the proceeding will be permitted to make such a statement, either orally or in writing, setting forth his or her position on the issues. These statements do not constitute testimony or evidence but may help the Board and/or parties in their deliberations as to the scope of issues to be considered. Oral statements will be heard at the outset of the conference, beginning at 9 a.m. on March 22, 1990, from persons who are present at that time. The number of persons making oral statements and the time allotted for each statement may be limited depending on the number of persons present at the designated time. Written statements may be submitted at any time. Written statements, and requests to make oral statements, should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. A copy of such statement or request should also be served on the Chairman of this Atomic Safety and Licensing Board, EWW/439, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

It is so ordered.

Bethesda, Maryland, February 7, 1990.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 90–3488 Filed 2–9–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–454 and 50–455]

Commonwealth Edison Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 36 to Facility Operating License Nos. NPF–37 and NPF–66 issued to the Commonwealth Edison Company, which revised the Technical Specifications for operation of the Byron Station, Units 1 and 2, located in Ogle County, Illinois. The amendments were effective as of the date of its issuance.

The amendments allow the use of Vantage 5 fuel.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this was published in the **Federal Register** on September 11, 1989 (54 FR 37518). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated April 1982.

For further details with respect to the actions see (1) the application for amendment dated July 31, 1989, (2) Amendemnt No. 36 to License Nos. NPF–37 and NPF–66, and (3) the Commission's related Safety Evaluation and Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room 2120 L Street, NW., and at the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland this 31st day of January 1990.

For the Nuclear Regulatory Commission.

John W. Craig,

Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 90-3489 Filed 2-13-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-155]

Consumers Power Co. (Big Rock Point Plant); Exemption

I

Consumers Power Company (CPC, the licensee) is the holder of Facility Operating License No. DPR-6 which authorizes the operation of the Big Rock Point Plant (the facility) at steady-state reactor power levels not in excess of 240 megawatts thermal (rated power). The facility consists of one boiling water reactor located at the licensee's site in Charlevoix County, Michigan. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

Section III.G.1.a of appendix R to 10 CFR part 50 specifically requires that one train of systems necessary to achieve and maintain hot shutdown be free of fire damage.

By letter dated October 14, 1986, and supplemented by letters dated February 27, 1987, and February 22, 1988, the licensee requested an exemption from the requirements of section III.G.1.a of appendix R to 10 CFR part 50 for having one train of systems necessary to achieve and maintain hot shutdown be free of fire damage.

Big Rock Point normally utilizes the plant Emergency Condenser (EC) to cool the Primary Coolant System (PCS) which is the preferred method for achieving and maintaining plant hot shutdown, following a fire event in the plant concurrent with loss of offsite power. In the above case, steam flows by convection from the main steam drum to the tube side of the EC and after its condensation by cooling water on the shell side of the EC, the condensate flows by gravity back to the steam drum. Heat is thus removed from the PCS by the cooling water on the shell side, which vaporizes and is discharged to the atmosphere via the plant stack. Cooling water on the shell side of the EC is sufficient to achieve plant hot shutdown from full power and maintain it for at least 4 hours. Makeup cooling water to the shell side is supplied before 4 hours are elapsed by the Demineralized Water (DW) system with the Fire (FW) system serving as the backup source, since the DW tank has water for about 8 hours after shutdown. With the above procedures, hot shutdown can be maintained for days or weeks. Cold shutdown is achieved by cooling the PCS in the Shutdown Cooling Heat Exchanger by the Reactor Cooling Water which, in turn, is cooled by the Service Water (SW) in the Reactor Cooling Water Heat Exchanger.

The diesel and electric fire water pumps (1 each) and the two WS pumps are all located in the screenhouse. The SW pumps are separated from the diesel FW pump by more than 20 feet and additionally there is an automatic fire detection system. However, since there is no automatic fire suppression system in the screenhouse, the licensee has assumed that the worst case fire in the screenhouse will result in the unavailability of the diesel FW pump driver, the electric FW pump motor, and both SW pump motors and their power supply cables. The fire will also affect the delivery of makeup water to the EC, since such delivery requires two air-operated valves to the EC to be opened. Air to open these valves is suppled by one of three plant instrument air compressors which are normally cooled by SW. Consequently, a severe screenhouse fire will compromise the ability to maintain hot shutdown, as long as it is needed, and the ability to achieve cold shutdown. The licensee, has, therefore, proposed a hot shutdown repair to provide the capability to maintain hot shutdown for at least 36 hours (though the licensee does not intend to maintain it that long) and a cold shutdown repair which can be achieved within 36 hours.

For the above postulated screenhouse fire, hot shutdown will be achieved by tripping the reactor to control reactivity, and opening the EC outlet valves for decay heat removal. Makeup water required for the shell side of the EC after 4 hours will be provided by the DW pump (which is not fire affected) by opening two normally closed air-operated valves and establishing a flow path from the pump to the EC. Since both the SW pumps will be unavailable due to fire damage to their motors, the air compressor which supplies air to open these valves will be cooled by the DW system. This will be accomplished by a hot shutdown repair, which involves connecting temporarly an on-site stored cooling water hose from the DW system outlet through a portion of the SW system (where it enters the air compressors cooling system) to the air compressors cooling header; valving in only the air compressor chosen; closing apropriate valves to prevent the drainage of DW system to other sections of the SW system; isolating the SW system from the air compressors; opening a valve in the DW system to permit the flow of DW to the air compressors cooling headers; connecting and starting the standby diesel generator to provide power for the DW pump and the air compressor; and starting the air compressor. The licensee states that Chicago fittings have been permanently installed at both ends of the hose, on the SW piping in the vicinity of the air compressors, and on the DW piping to facilitate ease of connecting the hose. The licensee further states that the task will require access to locations outside the screenhouse (Electric Equipment Room (EER) where the hose is stored and the air compressors are located, and the machine shop or boiler room adjacent to the EER) and that the entire task will require less than 10 minutes for completion. The repair will be completed before 4 hours.

As mentioned above, the DW tank has sufficient water to last for about 8 hours. If water is needed beyond that time, it can be transferred to the DW tank from other on-site water tanks (e.g., condensate storage tank, waste receiver tanks). The licensee has determined by analysis that with the above arrangement (cooling water supply from the DW tank to the air compressor via a temporarily connected hose and to the shell side of the EC and starting air compressor) and with credit from other on-site tanks, hot shutdown can be maintained for at least 36 hours. The operating procedures additionally include instructions to call the Charlevoix Fire Department to furnish a truck with raw water to fill the DW tank if makeup water is required beyond 36 hours.

Regarding the repair for achieving cold shoutdown, the licensee stated that during the time available for such a repair, the damaged motor of one of the SW pumps will be removed; the on-site stored spare motor will be transported to the intake structure by crane truck, fork lift or pickup truck, delivered through the truck door to the intake structure, and transported to the SW pump by the manually powered overhead crane in the screenhouse; the spare motor will be bolted to the SW pump casing; the shaft will be bolted to the pump coupling; and the electrical connection (onsite power cable from the onsite emergency diesel generator) will consist of bolted lugs wrapped with tape. The licensee had performed an analysis (July 1, 1986, submittal) which demonstrated that the overhead crane in

the screenhouse and the SW pumps will survive the screenhouse fire. The licensee states the entire replacement task can be accomplished by three maintenance personnel and that it will take less than 8 hours to complete. The licensee has determined that with one SW pump made available in the above manner, cold shutdown can be achieved within 12 hours after the pump becomes operational. The licensee also states that the spare motor is stored on-site in an accessible location and that it will be inspected at regular intervals as part of the plant inspection program.

The possible need for additional fuel to the diesel generators from off-site sources due to postulated loss of off-site power for 72 hours has been identified as an open item in a Fire Inspection Report for Big Rock Point (Inspection Report No. 50–155/88–06 Details—Item 2.c). Regarding the above, in a telephone conversation with the staff on June 30. 1988, the licensee stated that they do not anticipate any such need. However, should it arise, they can secure the needed fuel from off-site sources within 8 hours of their request. In the above telephone conversation, the licensee also committed to revise the Emergency Operating Procedures EMP–3.10-Fire, appendix IV—Severe Screenhouse Fire, as suggested in the Inspection Report mentioned above (specific items are listed under 7.3 of the Inspection Report—Details).

Based on the above, the staff has determined that the proposed repairs are feasible and that sufficient margins in time will be available for completing them in a timely manner. The staff has further determined that the proposed cold shutdown repair can be completed within 72 hours as required by appendix R, Item III.G.1.b. The staff has also determined that with the proposed repairs completed in a timely manner, cold shutdown following a severe screenhouse fire can be achieved within 72 hours with or without off-site power.

III

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a), that (i) the exemption as described in Section II is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and (ii) special circumstances are present for the exemption in that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of appendix R to 10 CFR part 50. Specifically, the underlying purpose of appendix R, Section III.G.1. a is to assure that a suitable complement of safe-shutdown equipment will be available, post-fire, to achieve and maintain hot shutdown of the reactor. By implementing the hot and cold shutdown repairs, the licensee meets in the intent of this rule.

The Commission hereby grants an exemption from the requirements of Section III.G.1.a of appendix R to 10 CFR part 50 to allow a hot shutdown repair to maintain hot shutdown following a worst case fire in the plant screenhouse.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (55 FR 1742 January 18, 1990).

The licensee's request dated October 14, 1986, and supplemented by letters dated February 27, 1987, and February 22, 1988, are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the North Central Michigan College, 1515 Howard Street, Petoskey, Michigan.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 8th day of February 1990.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Acting Director, Division of Reactor Projects-III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90–3490 Filed 2–13–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–382; License No. NPF–38, EA 89–69]

Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3); Order Imposing Civil Monetary Penalty

I

Louisiana Power & Light Company is the holder of Operating License No. NPF–38 issued by the Nuclear Regulatory Commission (NRC/Commission) on March 16, 1985. The license authorizes the licensee to operate the Waterford Steam Electric Station, Unit 3, in accordance with the conditions specified therein.

II

An inspection of the licensee's activities was conducted March 8–9, 1989. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated June 28, 1989. The Notice stated the nature of the violation, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violation. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated July 28, 1989. In that response, the licensee admitted to the violation but requested that the violation be reclassified at Severity Level IV and that the proposed civil penalty be fully mitigated.

III

After consideration of the licensee's response and the statements of fact, explanation, and arguments for mitigation contained therein, the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support has determined as set forth in the appendix to this Order that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended 42 U.S.C. 2282, PL 96–295 and 10 CFR 2.205, *It is hereby ordered, That:*

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with copies to the Assistant General Counsel for Hearings and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, and NRC Resident Inspector at Waterford Steam Electric Station, Unit 3.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings.

If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

whether, on the basis of the admitted violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, this Order should be sustained.

Dated at Rockville, Maryland, this 2nd day of February 1990.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix—Evaluations and Conclusions

On June 28, 1989, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during an NRC inspection in March 1989. Louisiana Power & Light Company responded to the Notice on July 28, 1989. The licensee admitted the violation but requested a withdrawal of the civil penalty and a reclassification of the violation at Severity Level IV. Further, LP&L requested that should the NRC conclude a civil penalty is still warranted, after considering the company's arguments, it should mitigate the fine in its entirety with the amount of the mitigated fine being offset by LP&L's payment of an equal amount to Nichols State University. The NRC's evaluation and conclusions regarding the licensee's arguments are as follows:

Restatement of the Violation

Inoperable Emergency Core Cooling System (ECCS) Subsystem

Technical Specification 4.0.5 requires, in part, that inservice testing in accordance with Section XI of the ASME Boiler and Pressure Vessel Code shall be performed for the required pumps and that such testing shall be in addition to other specified Surveillance Requirements.

Technical Specification 3.5.2 requires that two independent ECCS sybsystems shall be OPERABLE with each subsystem comprised, in part, of one OPERABLE high-pressure safety injection (HPSI) pump. With one ECCS subsystem inoperable, Technical Specification 3.5.2 requires that the inoperable subsystem be restored to OPERABLE status within 72 hours or at least be in HOT STANDBY (Mode 3) within the next 6 hours and in HOT SHUTDOWN (Mode 4) within the following 6 hours.

Contrary to the above, one ECCS subsystem became inoperable on November 22, 1988, and Waterford Steam Electric Station, Unit 3 was not placed in Hot Standby (Mode 3) and subsequently Hot Shutdown (Mode 4) as required by Technical Specification 3.5.2. Specifically, the B HPSI pump became inoperable on November 22, 1988, when it did not meet the recirculation flow requirements of Article 3000 of Section XI of the ASME Boiler and Pressure Vessel Code.

This is a Severity-Level III violation. (Supplement I)

Summary of Licensee's Response to the Violation

The licensee admits to violating Technical Specification 4.0.5.a in that the inservice test (IST) program did not specify ranges for the fixed recirculation flowrate for the B HPSI pump in accordance with the requirements of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Article IWP-3100).

The licensee argues, however, that this violation resulted from a misunderstanding between LP&L and the Office of Nuclear Reactor Regulation (NRR). The licensee contends that the source of this misunderstanding occurred as a result of LP&L's and NRR's differing interpretation of Relief Request 2.1.3 of LP&L's IST program that LP&L had requested from NRC. In Revision 1 to LP&L's IST program, LP&L proposed to test the applicable pumps using the fixed resistance flow path and measuring pump differential pressure to determine pump degradation. Pump differential pressure, coupled with pump vibration, would be used to determine test frequency and operability in accordance with Table IWP-3100-2, "Allowable Ranges of Test Quantities." As a result, LP&L established Alert, Required Action, and acceptable limits for HPSI pump differential pressure and vibration.

The licensee stated that plant personnel were concerned about testing with an unapproved IST program since the beginning of commercial operation in September 1985. They noted, however, that during a working meeting with NRC in October 1984, LP&L explained the basis for Relief Request 2.1.3 to NRC, and that this proposed testing method was not questioned.

The licensee acknowledges the receipt of a letter from NRR on May 20, 1988, that required, in part, the recording of all parameters (including recirculation flow) in Table IWP-3100-2 for the HPSI pumps in order to determine pump operability. The licensee argues that LP&L misinterpreted the intent of this letter because LP&L always intended to measure and record HPSI pump recirculation flow in accordance with Table IWP-3100-2. Rather, LP&L interpreted the letter to require that the resistance of the HPSI system be varied in order to establish either a flow or differential pressure reference value. The HPSI system has a fixed resistance testing flow path. Therefore, this requirement could not be accomplished with the system configured as it is. Because of this misinterpretation, the licensee contacted NRR in June 1988 in order to resolve this misunderstanding. The licensee stated that NRR concluded that the NRC contractor probably did not recognize that the HPSI system had fixed resistance flow paths. On this basis, LP&L concluded that this issue would be resolved in the forthcoming approval of LP&L's IST program (Revision 5).

The licensee noted in its response that the apparent reduced recirculation flow had no impact on pump operability. The licensee attributed the drop in indicated recirculation flow to a reversed flow indicating orifice that was discovered by technicians on January 31, 1989. After the flow orifice was placed in its proper position, the B HPSI pump recirculation flow was recorded at 24.5 gpm, which is approximately the minimum value of 25 gpm required by the pump vendor. The licensee did note, however, that pump recirculation flow is not an unimportant measurement. The licensee maintains that when the recirculation flow was determined to have decreased to a value of approximately 19 gpm on November 22, 1988, this condition was evaluated and determined not to adversely affect pump operability. This evaluation was made on the basis of acceptable differential pressure and vibration measurements, and sound engineering judgment. Since no alert and required action range flowrates were established, the pump was not declared inoperable. Recognizing that an adverse trend existed, the licensee initiated Condition Identification (CI) No. 259394 to inspect what was suspected to be a partially clogged B HPSI pump recirculation line flow orifice.

NRC Evaluation of Licensee's Response to the Violation

The NRC staff agrees with LP&L that the violation of Technical Specification 4.0.5.a occurred as stated; however, the NRC staff disagrees that this violation occurred as a result of a misunderstanding between LP&L and NRR. Any initial confusion relative to the licensee's compliance with IWP-3000 for the HPSI system was due to LP&L's incorrect description of the HPSI system test line as a fixed "flowrate" system instead of a fixed "resistance" system. Once that point was addressed in LP&L July 8, 1988 letter, from the NRC staff's perspective there was no misunderstanding.

The alleged misunderstanding that the licensee refers to in this reponse to the Notice appears to be the fact that with a fixed resistance system, strict compliance with IWP-3000 for setting reference values cannot be achieved (such values are in fact dictated by the fixed resistance system). However, if this was a concern to LP&L, the NRC staff could not determine that fact by reviewing the licensee's IST program which committed to measuring, recording and evaluating differential pressure. If the differential pressure of the fixed resistance system could be adequately evaluated against a reference value, then so could the recirculation flowrate. It is the NRC staff's position that the May 20, 1988 letter, by reference to Table IWP 3100-2, makes clear that evaluation against a reference value for both recirculation flowrate and differential pressure is required. Yet, the licensee had only been measuring and recording the recirculation flowrate and had not explained why an adequate reference value for this parameter was not available when one was available for differential pressure.

With respect to degraded HPSI pump recirculation flow and its relationship to pump operability, NRC staff finds the licensee's response to this issue to be incomplete. Specifically, the licensee failed to recognize in its response that actual (and not just indicated) B HPSI pump recirculation flow had decreased. Examination of the B HPSI

pump internals in May 1989 revealed a degraded pump condition. In addition to other B HPSI pump deficiencies, the licensee concluded that the origin of the set screw that was lodged in the B HPSI pump recirculation line orifice was from the pump's fourth stage impeller wear ring. Following the removal of the set screw and the repair of the pump internals, the pump was operated, and recirculation flow was recorded at a value that was higher than that measured immediately after the reversal of the flow detector orifice in January 1989 as well as after the replacement of the pump thrust bearings and realignment of the balance drum in February 1989. On this basis, the staff concluded that the recirculation flow for the HPSI pump had actually degraded.

Although the licensee's investigation of the pump damage was not completely conclusive with respect to the cause of the damage to the pump internals, the licensee concluded that degraded recirculation flow did not cause or exacerbate the internal pump damage. This conclusion fails to consider the significance of the degraded flow condition. For a pump of this type, a low recirculation flow condition can either cause pump damage or be symptomatic of a pump or systemic problem. In this particular case, it appears that the reduced flow condition was, at least in part, indicative of pump degradation that was caused, in part, by inadequately performed maintenance. The significant regulatory issue is that, had the licensee been fully complying with the provisions of Table IWP-3100-2 of the ASME Boiler and Pressure Vessel Code in November 1988, the B HPSI pump would have been declared inoperable at that time. Although the licensee had not yet completely determined the extent of the pump degradation in terms of the pump's ability to perform its design function as of June 7, 1989, the fact remains that significant deficiencies with the pump internals were discovered. The staff concludes that these signficiant deficiencies would have been found and corrected months earlier had LP&L been in full compliance with Table IWP-3100-2.

Summary of Licensee's Request for Mitigation

The licensee asserts that the circumstances surrounding the violation support substantial mitigation of the civil penalty. In arguing for substantial mitigation of the civil penalty, the licensee notes that LP&L has had good past performance in the area of surveillance testing at Waterford 3. The licensee further contends that the nature of the violation did not provide LP&L with the opportunity to identify the violation and as a result full credit under the enforcement policy should be given for prompt identification and reporting. The licensee states that once the issue of compliance with section XI of the ASME Boiler and Pressure Vessel Code was understood, LP&L aggressively took steps to correct the testing criteria.

NRC Evaluation of Licensee's Request for Mitigation

In determining the proposed civil penalty of Fifty Thousand Dollars ($50,000), the NRC staff took into account LP&L's good past performance in the area of surveillance testing. This was balanced against the fact that the licensee's corrective action was not prompt and the corrective action was initially narrowly focused. The licensee has presented no new information to demonstrate that its corrective action was prompt and extensive. Although the licensee noted the degraded flow condition while conducting the test in November 1988, it did not intend to investigate the possibility of a clogged recirculating line orifice until the next planned HPSI system maintenance outage, which was not to have been accomplished for almost 4 months after the discovery of the low flow condition. It was not until late January 1989 that the licensee began to take action to resolve the low flow condition, and then only after NRC inspectors raised the concern of pump operability during the maintenance team inspection. The NRC staff notes that the cause of the low flow condition was not determined and corrected until May 1989, almost 6 months after the discovery of the low flow condition.

The NRC staff disagrees with the licensee's contention that this type of violation did not provide LP&L with the opportunity for prompt identification and reporting. In the licensee's response to the violation, it noted several discussions with NRC regarding the intent of Relief Request 2.1.3. Additionally, LP&L noted in a July 8, 1988, letter to NRR that they were measuring and comparing flow to a flow reference value. The NRC staff believes that the extensive involvement on the part of LP&L in developing revisions to their initial IST program and discussions with NRC staff provided them with numerous opportunities to detect that their HPSI pump surveillance procedure did not incorporate the requirement to measure, record, and evaluate HPSI pump recirculation flow in accordance with Table IWP-3100-2. The NRC staff does acknowledge that up until the licensee's receipt of the May 20, 1988, letter from NRR, compliance with the Table had not explicitly been delineated as a requirement. It is important to note, however, that the May 20, 1988 NRR letter was explicit in requiring the recording and measuring of flow per Table IWP-3100-2 in order to estalish, in part, HPSI pump operability. Moreover, in February 1989, NRR practically granted LP&L's Relief Request 2.1.3, but still required that all parameters of Table IWP-3100-2 (including flow) be measured and recorded in order to determine HPSI pump operability. Accordingly, the staff believes that LP&L had sufficient opportunity to discover and subsequently correct the HPSI pump surveillance procedure inadequacies at least as early as the spring of 1988.

The licensee was also late in reporting the violation of Technical Specification 4.05.a in accordance with 10 CFR 50.73. The licensee event report that discusses the violation of Technical Specification 4.0.5.a was not issued until May 20, 1989. The NRC staff believes that the licensee had sufficient information to determine the reportability of this event no later than March 9, 1989, when NRC conducted a followup inspection of the B HPSI pump low flow condition. During the Enforcement Conference on May 8, 1989, licensee management indicated that they still had not determined the reportabilitty of this event, even though they acknowledged violating Technical Specification 4.0.5.a.

Summary of Licensee's Request for Reclassification of NOV Severity Level

The licensee agrees that a violation did occur, but argues that the violation was not "significant," and therefore should be more appropriately classified as a Severity Level IV violation.

NRC Response to Licensee's Request for Reclassification of NOV Severity Level

For reasons that have been previously stated, NRC staff disagrees with the licensee's position that the violation was not significant. The significant regulatory issue was the failure by the licensee to identify a Technical Specification defined condition of inoperability. The violation is even more significant given that actual reduced HPSI pump recirculation flow was the first indication of a degraded pump condition. Had the licensee promptly evaluated and corrected the reduced flow condition, the B HPSI pump would not have remained in a degraded condition for several months before it was repaired. Accordingly, the NRC staff considers this violation "cause for significant concern" in accordance with the general description of Severity Level III violations in the enforcement policy and believes its significance is commensurate with other examples of Severity Level III violations in the Supplements to the policy. Thus, the NRC staff adheres to its original position that the violation is properly classified.

Summary of Licensee's Request for Equal Payment to Nichols State University in Lieu of a Civil Penalty

LP&L requested that should the NRC conclude a civil penalty is warranted in this case, the NRC exercise its authority under section 234(a) of the Atomic Energy Act, amended, 42 U.S.C. 2282(a) (Act) and mitigate the civil penalty in its entirety and require UL&L to make a payment of an equal amount to Nichols State University.

NRC Evaluation of Licensee's Equal Payment Request

The NRC staff concludes that donations of civil penalty monies to an educational institution is inappropriate. Such a policy could weaken the effectiveness of the civil penalty program, in part, by allowing licensees to receive positive publicity as a result of the poor performance which justified the civil penalty. In addition, granting such a request would leave many questions dealing with the administration of the resulting program unanswered.

Because the decision to deny this request is being made on policy grounds, it need not be determined whether the NRC, in fact, has the legal authority to permit such donations.

NRC Conclusion

On the basis of the foregoing evaluation

LP&L's response to the June 28 Notice of Violation and Proposed Imposition of Civil Penalty, the NRC staff concludes that the violation occurred as stated in the Notice of Violation and Proposed Imposition of Civil Penalty and that mitigation of the proposed civil penalty or reclassification of the violation at Severity Level IV is not warranted. Accordingly, a civil penalty in the amount of $50,000 should be imposed.

[FR Doc. 90-3491 Filed 2-9-90; 8:45 am]

BILLING CODE 7590-01-M

RESOLUTION TRUST CORPORATION

Adoption: Interim Statement of Policy, Resolution of Minority-Owned Depository Institutions

SUMMARY: Notice is hereby given that on January 30, 1990, the Resolution Trust Corporation ("RTC") hs adopted an interim policy to insure to the maximum extent possible the preservation of the ownership characteristics of minority-owned depository institutions that come under its jurisdiction, whenever practicable. To achieve this goal the RTC will competitively market minority-owned depository institutions using the same policies and procedures used for all other depository institutions except for certain bidding procedures and interim capital assistance. Public comment on the policy is invited at this time. Copies of the interim policy can be obtained from the RTC.

DATES: Comments on the policy are requested by May 7, 1990.

ADDRESSES: Copies of the interim program can be obtained from the Executive Secretary, Resolution Trust Corporation, 550 17th Street, NW. Washington, DC 20429. Send comments to John M. Buckley, Jr., Executive Secretary, Resolution Trust Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to Room 7102 on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in room 7102 between 8:30 a.m. and 5 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Acquisition and Marketing Group, Resoultion Trust Corporation, 202-416-4316.

Dated at Washington, DC this 8th day of February, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90-3418 Filed 2-13-90; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

The Crown Companies Group, Ltd. 500-1; Order of Suspension of Trading

February 9, 1990.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of The Crown Companies Group, Ltd. (formerly The Crown Gold Companies Group, Ltd.), and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, the identity of controlling persons and the company's business, operations, and financial condition. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company, over-the-counter or otherwise, is suspended for the period from 9:30 a.m. (EST), February 9, 1990 through 11:59 p.m. (EST), on February 18, 1990.

By the Commission.

Jonathan C. Katz,

Secretary.

[FR Doc. 90-3461 Filed 2-3-90; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-9047]

Issuer Delisting; Application To Withdraw From Listing Independent Bank Corp., Common Stock, $.01 Par Value

February 8, 1990.

Independent Bank Corp. ("Company"), has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the Boston Stock Exchange ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Common Stock is currently listed on the BSE and is also traded in the over-the-counter market on the National Association of Securities Dealers Automated Quotations ("NASDAQ") System (Symbol: INDB). Historically, a large majority of the trading activity in the Common Stock has taken place on the NASDAQ and therefore the benefits from dual listing at this time do not warrant the expenditure of time and money necessary to comply with the rules and regulations of the BSE.

Any interested person may, on or before March 2, 1990, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-3462 Filed 2-13-90; 8:45 am]

BILLING CODE 8010-10-M

DEPARTMENT OF STATE

[Public Notice 1162]

Study Group 1 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 1 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet at 9:30 a.m., February 23, 1990 in room 1605 of the Department of Commerce, 14th and Constitution, NW., Washington, DC.

Study Group 1 deals with the efficient use of the radio frequency spectrum, and in particular, with problems related to sharing; principles for classifying emissions; and measurement of emission characteristics and spectrum occupancy. The purpose of the meeting is to begin work for the next four-year study cycle and to prepare recommendations for upcoming meetings of the CCIR, including the Plenary Assembly.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Request for further information should be directed to Ms. Marcie Geissinger, Dept. of Commerce-NTIA/ITS, Boulder, Colorado 80303, phone (303) 497-5993, telefax (303) 497-5933.

Dated: February 5, 1990.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 90–3403 Filed 2–13–90; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1163]

Study Group 11 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 11 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet at 10 a.m., February 23, 1990 in the V.T.W. Board Room, National Association of Broadcasters, 1771 N Street, NW., Washington, DC.

Study Group 11 deals with television broadcasting, including satellite and recording matters. The purpose of the meeting is to begin work for the next four-year study cycle and to prepare recommendations for upcoming meetings of the CCIR, including the Plenary Assembly. It will also consider preparations for the March 1990 meeting in Atlanta of Interim Working Party 11/6 relating to high-definition television (HDTV).

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Request for further information should be directed to Mr. John Reiser, Federal Communications Commission, Washington, DC 20554, phone (202) 254–3394, telefax (202) 653–5402.

Dated: February 5, 1990.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 90–3404 Filed 2–13–90; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Participation by Minority Business Enterprise in Department of Transportation Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Notice; Inflation adjustment of size limits on small businesses participating in the DOT Disadvantaged Business Enterprise Program.

SUMMARY: Under the statutes governing the Department's Disadvantaged Business Enterprise ("DBE") Program, firms are not considered to be small business concerns, and hence are not eligible DBEs, once their average annual receipts over the preceding three fiscal years reaches $14 million. These statutes, and the DOT rule implementing them, provide for the Secretary to adjust the $14 million figure for inflation. This notice makes the relevant inflation adjustment.

EFFECTIVE DATE: February 14, 1990.

FOR FURTHER INFORMATION CONTACT: Bradford K. Talamon, Office of the Assistant General Counsel for Environmental, Civil Rights and General Law, 400 Seventh St. SW., Room 10102, Washington, DC 20590; telephone: (202) 366–9161.

SUPPLEMENTARY INFORMATION: In section 106(c)(2) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 ("STURAA") and section 105(f) of the Airport and Airway Safety and Capacity Expansion Act of 1987, Congress determined that in order to ensure that the DBE Program meets its objective of helping small businesses owned and controlled by socially and economically disadvantaged individuals become self-sufficient and able to compete in the market with non-disadvantaged firms, DBE firms should no longer be eligible for the program once their average annual receipts over the preceding three fiscal years reaches $14 million. The definition of "small business concern" in 49 CFR 23.62 implements these provisions of the statues.

Both statutes make the $14 million figure subject to adjustment by the Secretary for inflation. The regulation provides that the Secretary shall make such adjustments from time to time.

The Department of Commerce, Bureau of Economic Analysis, prepares constant dollar estimates of state and local government purchases of goods and services by deflating current dollar estimates by suitable price indexes. These indexes include purchases of durable goods, nondurable goods, financial and other services, structures (11 types of new construction, net purchase of existing residential structures, nonresidential structures and maintenance repair services) and compensation of employees. By use of these price deflators, we are able to adjust dollar figures in both past and future years for inflation.

DOT's largest programs extend federal financial assistance through FHWA, UMTA and FAA to state and local governments or entities created by them. Through its programs, DOT provides funding for contracts under these programs for goods and services which involve transportation-related projects and are awarded by state and local governments. Given the nature of DOT's DBE Program, adjusting the $14 million size limit on small businesses in the same manner in which inflation adjustments are made to the costs of state and local government purchases of goods and services is simple, accurate, fair and in accordance with the statutory command in both section 106(c)(2) of the STURAA and section 105(f) of the Airport and Airway Safety and Capacity Expansion Act of 1987.

The inflation rate of the cost of purchases by state and local governments for the current year is calculated by dividing the price deflator for 1988 (128.7) by the 1987 price deflator (123.0). The result is 1.0463, which represents an inflation rate of 4.63 percent from December 31, 1987 to December 31, 1988. Multiplying the $14,000,000 figure by 1.0463 equals $14,648,780, which will be rounded off to the nearest $10,000, or $14,650,000.

Therefore, until further notice, if a firm's average gross annual receipts over the preceding three years does not exceed $14,650,000, it does not exceed the small business size limit contained in section 106(c)(2) of the STURAA, section 105(f) of the Airport and Airway Safety and Capacity Expansion Act of 1987 and 49 CFR 23.62.

This decision avoids the complexity of making different adjustments for inflation for different industries and types of firms within industries. The small business size limit will be adjusted annually in future notices of this type.

This notice only affects the $14 million small business size limit on the DOT DBE Program. The SBA size limits contained in 13 CFR part 121 remain unaffected and are not subject to inflation adjustments by DOT.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 90–3419 Filed 2–13–90; 8:45 am]

BILLING CODE 4910–62–M

Office of the Secretary

Order on Procedural Dates and on Motions for Confidential Treatment and Request for In Camera Handling of Documents

In the matter of Joint Application of American Airlines, Inc., Eastern Air Lines, Inc. and Continental Air Lines, Inc. for Certificate Transfer Under Section 401(h) of the Federal Aviation Act.

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Order 90–2–18.

SUMMARY: By Order 90–2–18, the Department is ruling on the applicants'

motions for confidential treatment and request for in camera inspection of documents, for the materials submitted by the applicants pursuant to the Department's January 10, 1990 information request. The request for in camera inspection is denied and the motions for confidential treatment are granted in part, with the list of documents for which confidential treatment is granted appended to the order.

DATES: Petitions for reconsideration shall be filed by February 15, 1990, with answers to those petitions to be filed five calendar days later. Answers to the application are due 14 days from February 16, 1990. If the applicants file a petition for reconsideration or a statement of intent to seek judicial review of the order, then answers to the application are due 14 days from the effective date of a Department order or judicial ruling on the issue of confidential treatment. Replies to these answers shall be due seven days later.

ADDRESSES: The above pleading should be filed in Docket 46703, and addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street SW., room 4107, Washington, DC 20590.

Dated: February 8, 1990.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 90-3420 Filed 2-13-90; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Amendment of Privacy Act System of Records, DOT/FAA 815; Investigative Record System

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) herewith publishes a notice amending the existing Privacy Act System of Records, DOT/FAA 815, Investigative Record System, as last published on April 18, 1988, Federal Register Vol. 49, pages 15395–15397, pursuant to the requirements of the Privacy Act of 1974 (Pub. L. 93–597). The amendments implement section 7210, Federal Aviation Administration Drug Enforcement Assistance Act of 1988, Pub. L. 100–690, 102 Stat. 4424–4434. The provisions of section 7210 require the FAA to receive, investigate, collect, and disseminate information and evidence to other Federal, State, and local law enforcement agencies, to the extent consistent with aviation safety regarding violations or probable violations by pilots, aircraft owners, and aircraft mechanics of laws regulating controlled substances.

In order to expedite its implementation of the FAA Drug Enforcement Assistance Act of 1988, the FAA has sought and received a waiver of the 60-day notice and coment period from the Office of Management and Budget.

EFFECTIVE DATE: The amendments to the Privacy Act System of Records, DOT/FAA 815, Investigative Record System, are effective immediately on February 14, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. David Smith, Federal Aviation Administration, Investigations and Security Division, ACS–300, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8768.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has amended the existing Privacy Act System of Records, DOT/FAA 815, Investigative Record System, effective immediately.

The DOT/FAA 815, Investigative Record System, is amended by expanding the categories of records to include information regarding illegal drug trafficking by pilots, aircraft owners, and aircraft mechanics, and by adding computer system hardware and software. The latter expansion of the system of records allows significantly greater access to the information. However, the proposed amendments will only have a minimal impact on the privacy of individuals since no new routine uses have been added and the existing ones have only been edited for clarification and to eliminate redundancy.

Accordingly, the FAA amends its Privacy Act System of Records, DOT/FAA 815, Investigative Record System, effective immediately upon publication as follows:

DOT/FAA 815

SYSTEM NAME:

Investigative Record System, DOT/FAA 815.

SYSTEM LOCATION:

These records are maintained at the Office of Civil Aviation Security in Washington, DC; the FAA regional Civil Aviation Security Divisions; the Civil Aviation Security Division at the Mike Monroney Aeronautical Center in Oklahoma City, Oklahoma; the Civil Aviation Security Staff at the FAA Technical Center, in Atlantic City, New Jersey; and the various Federal Records Centers located throughout the country.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former applicants for FAA employment
Current and former FAA employees
Individuals considered for access to classified information or restricted areas and/or security determinations such as contractors, employees of contractors, experts, instructors, and consultants to Federal programs
Aircraft owners
Flight instructors
Pilots
Mechanics
Designated FAA representatives
Other individuals certificated by the FAA
Individuals involved in tort claims against the FAA
Employees, grantees, subgrantees, contractors, subcontractors, and applicants for FAA-funded programs
Other individuals who are of investigative interest to the FAA, law enforcement, or investigative agencies

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of investigations and inquiries conducted by the Office of Civil Aviation Security, the FAA regional Civil Aviation Security Division, the Mike Monroney Aeronautical Center Civil Aviation Security Division, and the FAA Technical Center Civil Aviation Security Staff; information received in various formats as the result of investigations conducted by Federal, State, and local investigative of law enforcement agencies, which relate to the mission and function of the Office of Civil Aviation Security and field elements; and information received in various formats as the result of investigations conducted by authorized personnel of the FAA, other Federal agencies, State and local drug enforcement agencies regarding the actual or probable violation by pilots, aircraft owners, or aircraft mechanics of civil and criminal laws regulating controlled substances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To and for use by a court of law or an administrative tribunal or hearing, including referrals related to probation and parole matters.

To authorized representatives of Federal agencies and departments who require access to the file pursuant to an investigation or inquiry conducted under appropriate statutes, Executive Orders

or administrative procedures of Federal Government. This can include investigations completed by FAA and referred to other Federal agencies for further investigation, prosecution or administrative action.

To authorized representatives of U.S. air carriers where air safety might be affected.

To other agencies or instrumentalities of any governmental jurisdiction, including State, local and foreign governments, and the District of Columbia for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims, regardless of the stated purpose for the collection of the information in the System of Records.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in approved security file cabinets and containers, in file folders, on lists and forms, and in computer processable storage media.

RETRIEVABILITY:

These records are retrieved by name or other identifying symbols.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access and use. Computer processing of information is conducted with established FAA computer security regulations. A risk assessment of the FAA computer facility used to process this system of records has been accomplished.

RETENTION AND DISPOSAL:

These records are destroyed or retired to the area Federal Records Center and then destroyed in accordance with FAA Order 1350.15B, Records Organization, Transfer and Destruction Standards. The retention and destruction period for each record varies depending on the type of record, category of investigation, or significance of the information contained in the record. All records are destroyed by approved methods.

SYSTEM MANAGER(S) AND ADDRESS:

The FAA Investigative Record System is decentralized and requests for such records should be directed to the appropriate system manager as follows:

For the Washington Metropolitan area, excluding Eastern Region jurisdiction: Director of Civil Aviation Security, 800 Independence Avenue, SW., Washington, DC 20591.

For the geographical area under the jurisdiction of the various regions: Manager, Civil Aviation Security Division, of the appropriate region (See the FAA Directory for addresses).

For the jurisdiction of the FAA Technical Center: Manager, Civil Aviation Security Staff, FAA Technical Center, Atlantic City, NJ 08405

For the jurisdiction of the Mike Monroney Aeronautical Center: Manager, Civil Aviation Security Division, Aeronautical Center, Oklahoma City, OK 73125.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system of records contains a record pertaining to him or her by addressing a written request to any of the systems managers identified above. The request should include enough information to allow for accurate identification of the record. For example, the full name, date and place of birth, social security number of the requester, and any available information regarding the type of record involved should be provided.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to such systems of records should contact the system manager. However, investigative data compiled for law enforcement purposes may be exempt from the access provision pursuant to 5 U.S.C. 552a(k)(2) and (k)(5).

CONTESTING RECORD PROCEDURES:

Individuals who desire to contest information about themselves contained in this system of records should contact or address their inquiries to the Administrator or his delegate, 800 Independence Avenue, SW., Washington, DC 20591.

RECORD SOURCE CATEGORIES:

These records contain information obtained from the subject individual, interviews, review of records, and other authorized applicable investigative techniques.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The purpose of the exemption is to protect materials classified in the national interest and to protect investigatory materials compiled for law enforcement purposes. The exemptions which have been published in the **Federal Register** for this system may be applied pursuant to 5 U.S.C. 552a(k)(2) and (k)(5).

The Department of Transportation herewith publishes a notice proposing to amend the existing Privacy Act System Records, DOT/FAA 815, Investigative Record System.

Due to the serious nature of the Federal Aviation Administration Drug Enforcement Assistance Act of 1988, Pub. L. 100–690, 102 Stat. 4424–4434, which requires the amendments of this system of records, the FAA has submitted a letter requesting a waiver of the 60-day review period and outlining the compelling reasons for our request to the Office of Management and Budget.

Nevertheless, any person or agency may submit written comments on the proposed system to the Privacy Officer (M–34), room 7109, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Comments received will be maintained in a docket designated for this notice.

Issued in Washington, DC January 26, 1990.

Jon H. Seymour,

Assistant Secretary for Administration

[FR Doc. 90–3416 Filed 2–13–90; 8:45 am]

BILLING CODE 4910–62–M

Research and Special Programs Administration

Applications for Exemptions for Hazardous Materials

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before March 15, 1990.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10313-N	Atochem, Inc., Glen Rock, NJ.	49 CFR 178.115-10(a)	To authorize shipment of dimethylethylamine, classed as flammable and corrosive liquid n.o.s. in 17C drum with stenciled markings. (Mode 1.)
10314-N	Rohm and Haas Company, Philadelphia, PA.	49 CFR 172.101, 173.245(a)(33)	To authorize shipment of corrosive liquids, n.o.s. in specification 111A60W7 tank car built to 111A100W6 specification, insulated with a fusion welded stainless steel tank and no bottom outlet. (Mode 2.)
10316-N	McDonnell Douglas Corporation, St. Louis, MO.	49 CFR 173.87	To authorize more than one type of Class C explosive to be packaged in one outside packaging with each inside package exceeding 8 ounces and gross weight exceeding 50 pounds. (Mode 1.)
10317-N	Southern Air Transport, Inc., Miami, FL.	49 CFR 175.30, 49 CFR 172.101 table, column 6b.	To authorize a one-time shipment of rocket ammunition with explosive projectile, Class A explosive, which is forbidden for shipment by aircraft. (Mode 4.)
10318-N	Sonoco Fibre Drum, Inc., Lombard, IL.	49 CFR 173.119, 173.125, 173.245, 173.249, 173.249(a), 173.250(a), 173.256, 173.257, 173.262, 173.263, 173.264, 173.265, 173.266, 173.269, 173.272, 173.276, 173.277, 173.283, 173.287, 173.288, 173.289, 173.292, 173.297, 173.299(a).	To manufacture, mark and sell a blow-molded, polyethylene tank within a wire frame enclosure for the shipment of certain hazardous materials. (Modes 1, 2.)
10319-N	Amtrol, Inc., West Warwick, RI.	49 CFR 173.306(g)(1)	To manufacture, mark and sell a non-DOT specification water pump system tank for shipment of compressed air and nitrogen, classed as non-flammable gas. (Modes 1, 2, 3.)
10320-N	Worthington Cylinder Corporation, Columbus, OH.	49 CFR 173.303(a), 178.61	To manufacture, mark and sell non-DOT specification cylinder for shipment of acetylene, classed as flammable gas. (Modes 1, 3.)
10321-N	Worthington Cylinders Corporation, Columbus, OH.	49 CFR 173.302, app. B, 173.34	To extend retest period to 12 years for DOT Specification 4BA, 4BW and 4E cylinders used for shipment of flammable gas. (Mode 1.)
10322-N	Carleton Technologies, Inc., Orchard Park, NY.	49 CFR 173.302, 175.30, 178.65	To manufacture, mark and sell a non-DOT specification cylinder to be used as part of a pneumatic power supply system used for shipment of nitrogen or helium, classed as compressed gas. (Modes 1, 2, 4.)
10323-N	Solkatronic Chemicals, Inc., Morrisville, PA.	49 CFR 173.24, 173.300, 173.34	To manufacture, mark and sell a pressurized overpack for shipment of leaking gas cylinders containing commodities classed as flammable liquid. (Mode 1.)
10324-N	Ferro Corporation, Penn Yan, NY.	49 CFR 173.245	To authorize shipment of a corrosive liquid, n.o.s. containing 40% or less nitric acid, in DOT specification 35 polyethylene pails, with or without inner 4-mil heat sealed polyethylene liner. (Modes 1, 3.)
10325-N	Marine Container Equipment Certification Corp., Farmingdale, NJ.	49 CFR 173.315, 178.245-(1)(b), 178.245-5(b).	To authorize use of non-DOT specification IMO portable tanks with openings not grouped in one location on tank for shipment of liquified non-flammable gas and flammable gas. (Modes 1, 2, 3.)
10326-N	Allied-Signal Aerospace Company, Tempe, AZ.	49 CFR 173.302, 178.44	To authorize use of a non-DOT specification welded, cylindrical pressure vessel having 260 cubic inches nominal capacity and 10,000 psi nominal service pressure for shipment of helium, classed as non-flammable gas. (Modes 1, 2, 3, 4, 5.)
10327-N	CTI-Cryogenics Division of Helix Technology Corp., Waltham, MA.	49 CFR 173.306(f)(2)(iii), 175.3	To authorize shipment of helium classed as non-flammable gas, in accumulators which deviate from certain retest requirements. (Modes 1, 2, 3, 4, 5.)
10328-N	PPG Industries, Inc., Pittsburgh, PA.	49 CFR 173.119, 179.101-1(a), 179-102-11	To authorize alternate safety relief valve settings for DOT specification tank cars used for shipment of certain flammable liquids. (Mode 2.)
10329-N	Thiokol Corporation, Brigham City, UT.	49 CFR 173.92(b)	To authorize shipment of a rocket motor, Class B explosive, in a propulsive state with igniters installed, contained in a specially designed packaging configuration. (Mode 1.)
10330-N	Fluoroware, Inc., Chaska, MN.	49 CFR 173.119, 173.268, 173.299, 178.19, 178.35, 178.35(a), Part 173 Subpart F.	To manufacture, mark and sell a non-DOT specification portable tanks consisting of a rotationally molded teflon liner in a stainless steel shell for shipment of corrosive liquids, flammable liquids and oxidizers. (Modes 1, 2, 3.)
10331-N	Peerless Tube Company, Inc., Bloomfield, NJ.	49 CFR 173.34(d)(1), 178.65-10	To authorize shipment of non-flammable gas in one-piece monobloc non-DOT specification cylinder. (Mode 1.)
10332-N	ABB Composites, Inc., Irvine, CA.	49 CFR 173.301(h)	To manufacture, mark and sell a non-DOT specification composite pressure vessel for shipment of non-flammable gas. (Mode 1.)
10333-N	Van Leer Nederland B.V. Steel Containers, 3633 AK Vreeland, Netherlands.	49 CFR 178.116-6(a), Part 173 Subparts D, E, F and H.	To manufacture, mark and sell non-DOT specification 55 gallon capacity, 1 millimeter thick drums for shipment of those commodities authorized in DOT specification 17E 20/18 gauge drums. (Modes 1, 2, 3.)

NOTE: Federal Register Vol. 54, No. 242, page 51968 referencing exemption application No. 10295-N should have read as follows: To authorize shipment of pyrophoric liquid, n.o.s., classed as flammable liquid, in not over one gallon metal containers each constructed of not less than 14 gauge stainless steel.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 7, 1990.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 90-3445 Filed 2-13-90; 8:45 am]

BILLING CODE 4910-60-M

Office of Hazardous Materials Transportation; Applications for Renewal or Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is herby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be recieved on or before February 27, 1990.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
970-X	U.S. Department of Defense, Falls Church, VA.	970
970-X	Callery Chemical Company, Pittsburgh, PA.	970
2136-X	U.S. Department of Defense, Falls Church, VA.	2136
2582-X	Airco Electronic Gases, San Marcos, CA.	2582
2787-X	Raytheon Company, Andover, MA.	2787
4039-X	Airco Industrial Gases—Division of the BOC Group, Murray Hill, NJ.	4039
6309-X	Preferred Foam Products, Inc., Old Saybrook, CT.	6309
6333-X	General Chemical Corporation, Parsippany, NJ.	6333
6418-X	Nexus Ag Chemicals, Inc., Quincy, WA.	6418
6418-X	Simplot Company, Pocatello, ID.	6418
6418-X	Western Farm Service, Inc., Walnut Creek, CA.	6418
6418-X	Basin Fumigation, Quincy, WA.	6418
6418-X	Dow Chemical Company, Midland, MI.	6418
6418-X	Quincy Farm Chemicals, Inc. Quincy, WA.	6418
6418-X	Farmer's Supply Cooperative, Inc., Ontario, OR.	6418
6418-X	Great Lakes Chemical Corporation, El Dorado, AR.	6418
6418-X	PureGro Company, West Sacramento, CA.	6418
6484-X	W.R. Grace & Company, Lexington, MA.	6484
6694-X	Eurotainer US, Inc., New York, NY.	6694
6704-X	Dow Chemical Company, Midland, MI.	6704
6929-X	U.S. Department of Energy, Washington, DC.	6929
6932-X	Compagnies des Containers Reservoirs, Paris, France.	6932
6932-X	Eurotainer US, Inc., New York, NY.	6932
7024-X	Mount Vernon Mills, Inc., Ware Shoals, SC.	7024
7052-X	Sonatech, Inc., Ventura, CA	7052
7052-X	Martin Marietta Corporation, Denver, CO.	7052
7052-X	Sparton Defense Electronics, Jackson, MI.	7052
7052-X	Plainview Batteries, Inc., Plainview, NY.	7052
7052-X	TNR Technical, Inc., Altamonte Springs, FL.	7052
7052-X	American Meter Company, Philadelphia, PA.	7052
7052-X	Macrodyne, Inc., Clifton Park, NY.	7052
7052-X	FABRIKA Ni-Cd BATERIJA "TREPCA", Gnjilane, Yugoslavia.	7052
7454-X	Explosives Technologies International, Inc. (ETI), Wilmington, DE.	7454
7455-X	Explosives Technologies International, Inc. (ETI), Wilmington, DE.	7455
7477-X	System Donner/Safety Systems Division, Concord, CA.	7477
7498-X	General Chemical Corporation, Parsippany, NJ.	7498
7598-X	United Technologies Corp., Pratt & Whitney Mfg., East Hartford, CT.	7598
7768-X	Sonoco Plastic Drum, Inc., Lockport, IL.	7768
7811-X	Baxter Healthcare Corp./Burdick & Jackson Division, Muskegon, MI (see footnote 1).	7811
7834-X	Magnaflux Corporation, Chicago, IL.	7834
7972-X	Explosives Technologies International, Inc. (ETI), Wilmington, DE.	7972
7987-X	ICI Americas, Inc., Wilmington, DE.	7987
8369-X	Degussa Corporation, Ridgefield Park, NJ.	8369
8408-X	Presvac Systems (Burlington), Limited, Burlington, Ont., Canada.	8408
8426-X	C.K.C., Inc., Paso Robles, CA	8426
8451-X	LTV Missiles and Electronics Group, Dallas, TX.	8451
8451-X	Reynolds Industries Systems, Inc. (RISI), San Ramon, CA.	8451
8451-X	Honeywell, Inc., Hopkins, MN	8451
8451-X	U.S. Department of Defense, Falls Church, VA.	8451
8451-X	Trojan Corporation, Spanish Fork, UT.	8451
8451-X	Monongahela Power Company, Fairmont, WV.	8451
8451-X	Stresau Laboratory, Inc., Spooner, WI.	8451
8451-X	New England Ordnance, Inc., Guild, NH.	8451
8451-X	Ethyl Corporation, Baton Rouge, LA.	8451
8451-X	United Technologies Corporation, San Jose, CA.	8451
8451-X	Boeing Aerosapce and Electronics, Seattle, WA.	8451
8451-X	Thiokol Corporation—Strategic Operations, Brigham City, UT.	8451
8451-X	U.S. Department of Energy, Washington, DC.	8451
8470-X	Thiokol Corporation/Space Operations, Brigham City, UT.	8470
8495-X	Walter Kidde, Wilson, NC	8495
8582-X	Illinois Central Railroad Company, Chicago, IL.	8582
8582-X	Southern Pacific Transportation Company, San Francisco, CA.	8582
8585-X	Bergen Barrel and Drum Company, Kearny, NJ.	8585
8585-X	Dixie Poly-Drum Corporation, Yemassee, SC.	8585
8597-X	McDonnell Douglas Corporation, St. Louis, MO.	8597
8627-X	Exxon Chemical Americas, Houston, TX.	8627
8761-X	The Heil Company, Athens, TN.	8761
8781-X	Mauser Packaging, Limited, Litchfield, CT.	8781
8786-X	Gas Spring Company, Colmar, PA.	8786
8786-X	Stabilus GmbH, Koblenz, West Germany.	8786
8822-X	Certified Tank Manufacturing, Inc., Compton, CA.	8822
8845-X	Western Atlas International, Inc., Houston, TX.	8845
8870-X	Hach Company, Ames, IA	8870
9106-X	Kitty Hawk Airways, Inc., DFW INT'L Airport, TX.	9106
9133-X	American Cyanamid Company, Wayne, NJ.	9133
9164-X	Fabricated Metals, Inc., San Leandro, CA (see footnote 2).	9164
9172-X	CECOS International, Inc., Buffalo, NY.	9172
9209-X	General Chemical Corporation, Parsippany, NJ.	9209
9232-X	U.S. Department of Defense, Falls Church, VA.	9232
9243-X	Abatar, Inc., Winter Park, FL	9243
9262-X	Jet Reserach Center, Inc., Alvarado, TX.	9262
9366-X	Eurotainer US, Inc., New York, NY.	9266
9352-X	Perry Equipment Corporation, Mineral Wells, TX.	9352
9355-X	Panasonic Industrial Company, Secaucus, NJ.	9355

Application No.	Applicant	Renewal of exemption
9355-X	Matsushita Battery Industrial Company, Limited, Osaka, Japan.	9355
9491-X	Messer Griesheim Industries, Inc., Valley Forge, PA.	9491
9519-X	Transchem I, Corporation, Kearny, NJ.	9519
9569-X	Copps Industries, Inc., Menomonee Falls, WI.	9569
9571-X	U.S. Department of State, Washington, DC.	9571
9571-X	Environmental Health Research & Testing, Inc., Lexington, KY.	9571
9617-X	Alamo Explosives Company, Inc., Houston, TX.	9617
9617-X	E.I. du Pont de Nemours & Company, Wilmington, DE.	9617
*9632-X	Eurotainer US, Inc., New York, NY.	9632
9701-X	Trimeg Holdings, Limited, Calgary, Alberta, Canada, CN (see footnote 3).	9701
9750-X	LaRoche Industries Inc., Atlanta, GA.	9750
9761-X	Systron Donner Corporation, Concord, CA (see footnote 4).	9761
9769-X	CECOS International, Inc., Livingston, LA (see footnote 5).	9769
9809-X	Texas-New Mexico Pipe Line Company, San Angelo, TX.	9809
9832-X	L'Air Liquide Corporation, Sassenage, France.	9832
9860-X	Hoover, Group, Inc., Beatrice, NE.	9860
9861-X	Degussa Corporation, Ridgefield Park, NJ.	9861
9870-X	Dixie Poly-Drum Corporation, Yemassee, SC.	9870
*9617-X	Explosives Technologies International, Wilmington, DE.	9617
9870-X	Bergen Barrel and Drum Company, Kearny, NJ.	9870
9894-X	Luxfer USA, Limited, Riverside, CA.	9894
9903-X	Sherwood, Division of Harsco, Lockport, NY.	9903
9929-X	Thiokol Corporation, Elkton, MD.	9929
9935-X	Atlas Powder Company, Dallas, TX.	9935
9953-X	Jevic Transportation, Inc., Willingboro, NJ.	9953
10020-X	Allwaste, Inc., Washington, DC (see footnote 6).	10020
10155-X	Walpole, Inc., Mt. Holly, NJ (see footnote 7).	10155
10247-X	VICI Metronics, Santa Clara, CA (see footnote 8).	10247
10253-X	Drew Industrial Chem. (Division of Ashland Chem.), Boonton, NJ.	10253
10285-X	Western Growers Association, Newport Beach, CA (see footnote 9).	10285

(1) To authorize a larger capacity DOT specification 12A fiberboard box with handholes for shipment of certain corrosive, flammable, or class B poisonous liquids.

(2) To increase upper flash point limit for flammable liquids from 73 degree F to 100 degree F contained in non-DOT specification steel portable tanks of 345 gallon capacity.

(3) To authorize shipment of arsenical mixture solid, n.o.s., classed as poison B in non-DOT specification flexible bulk bags.

(4) To authorize construction of additional welded non-DOT specification cylinder with two discharge ports, relocation of mounting bracket and increase service pressure to 2000 cubin inch.

(5) To increase weight of oxidizer contained in hazardous waste materials from 2% to 4% packaged in specifically designed lab packs.

(6) To authorize certain flammable solids/sludges, classed as flammable solid, as an additional commodity for shipment in non-DOT specification roll-on/roll-off containers.

(7) To auth. shpmt. of ammonium nitrate fuel oil mixture, classed as blasting agent in non-DOT spec. collapsible disposable polyethylene lined woven polypropylene bulk bag not to exceed 2200 lbs.

(8) To reissue exemption originally issued on an emergency basis to authorize shipment of permeation device containing not over 5 grams of various hazardous materials.

(9) To reissue exemption originally issued on an emergency basis to authorize shipment of residual amounts of ammonia, non-flammable gas in non-DOT specification packaging.

Application No.	Applicant	Parties to exemption
6563-P	Linde Gases of New England, Inc., West Hartford, CT.	6563
6563-P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	6563
6563-P	Linde Gases of Southern California, Inc., Santa Ana, CA.	6563
6563-P	Linde Puerto Rico, Inc., Gurabo, PR.	6563
6563-P	Unigas, Inc., Mercedita, PR	6563
6563-P	Linde Gases of the Southeast, Inc., Wilmington, NC.	6563
6563-P	Union Carbide Industrial Gases, Inc., Danbury, CT.	6563
6563-P	Linde Gases of the South, Inc., Houston, TX.	6563
7052-P	EMF Systems, Boulder Creek, CA.	7052
7052-P	Digit Nav Company (DNC), Dallas, TX.	7052
7607-P	Ryan-Murphy, Inc., Denver, CO.	7607
7948-P	Union Pacific Resources Company, Fort Worth, TX.	7948
8074-P	Compressed Gases, Inc., Wichita, KS.	8074
8236-P	Daicel Chemical Industries, Ltd., Hyogo-Ken 671-16, Japan (see footnote 1).	8236
8390-P	Ashland Chemical, Inc., Columbus, OH.	8390
8426-P	T.W. Company, North Salt Lake City, UT.	8426
8445-P	Heritage Remediation/Engineering, Inc., Indianapolis, IN.	8445
8445-P	N.W. Transport Service, Inc., Commerce City, CO.	8445
8451-P	Magnavox Gov't & Industrial Electronics Company, Fort Wayne, IN.	8451
8451-P	TRW Vehicle Safety Systems, Inc., Washington, MI.	8451
8451-P	Technical Ordnance, Inc., Waconia, MN.	8451
8573-P	Hasa, Inc., Saugus, CA	8573
8582-P	Denver and Rio Grande Western Railroad Company, Denver, CO.	8582
8582-P	Southern Pacific Chicago St. Louis Corporation, San Francisco, CA.	8582
8966-P	Jones Chemicals, Inc., LeRoy, NY.	8966
9331-P	Ashland Chemical, Inc., Columbus, OH.	9331
9350-P	A.B. Chance Company, Centralia, MO (see footnote 2).	9350
9694-P	DPC Industries, Inc., Houston, TX.	9694
9697-P	DX Ventures, Ltd. Partnership dba DX Systems Co., Houston, TX.	9694
9694-P	DPC Industries, Ltd. Partnership dba DPC Ind. Co., Houston, TX.	9694
9723-P	Heritage Remediation/Engineering, Inc., Indianapolis, IN.	9723
9723-P	N.W. Transport Service, Inc., Commerce City, CO.	9723
10001-P	Compressed Gases, Inc., Wichita, KS.	10001
10001-P	Linde Gases of the Northwest, Portland, OR.	10001
10171-P	MCM (Management Control & Maintenance), S.A., CH-1211 Geneva, Switzerland.	10171
10253-P	Ashland Chemical, Inc., Columbus, OH.	10253

(1) Request Party status and to provide for an optional passive restraint inflator, classed as a flammable solid.

(2) To authorize Party status and to provide for alternative drawings and calculations for epoxy cylinders used for the shipment of sulfur hexafluoride, classed as a non-flammable gas.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 8, 1990.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

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DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 5-90]

Treasury Bonds of 2020

Washington, February 1, 1990.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $10,000,000,000 of United States securities, designated Treasury Bonds of 2020 (CUSIP No. 912810 EE 4), hereinafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Bonds and the price equivalent of each

accepted bid will be determined in the manner described below. Additional amounts of the Bonds may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Bonds will be dated February 15, 1990, and will accrue interest from that date, payable on a semiannual basis on August 15, 1990, and each subsequent 6 months on February 15 and August 15 through the date that the principal becomes payable. They will mature February 15, 2020, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereinafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Bonds will be issued only in book-entry form, and in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Bonds offered in the circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1 p.m., Eastern Standard time, Thursday, February 8, 1990. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, February 7, 1990, and received no later than Thursday, February 15, 1990.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be issued. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial banks or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount of yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which resulted in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issued discount limit of 92.500. That stated rate of interest will be paid on all of the Bonds. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determination of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price of the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in Section 1, and to make different percentage allotments to various classes of

applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Thursday, February 15, 1990. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, February 13, 1990. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, the tender form used to place the Bonds allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's Strips Program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate Strips components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Bond to be separated into the components described in Section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Bond may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Bonds. Once a Bond has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the Cubes Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution requested which does not comprise all of the necessary Strips components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Bonds of February 15, 2020, CUSIP No. 912810 EE 4

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) 2020 due February 15, 2020, CUSIP No. 912803 AS 2.

INTEREST COMPONENTS

Designation	CUSIP 912833	Designation	CUSIP No. 912833
Treasury Interest (TINT) Due		Treasury Interest (TINT) Due	
Aug. 15, 1990	BG 4	Aug. 15, 2005	CN 8
Feb. 15, 1991	BH 2	Feb. 15, 2006	CP 3
Aug. 15, 1991	BJ 8	Aug. 15, 2006	CQ 1
Feb. 15, 1992	BK 5	Feb. 15, 2007	CR 9
Aug. 15, 1992	BL 3	Aug. 15, 2007	CS 7
Feb. 15, 1993	BM 1	Feb. 15, 2008	CT 5
Aug. 15, 1993	BN 9	Aug. 15, 2008	CU 2
Feb. 15, 1994	BP 4	Feb. 15, 2009	CV 0
Aug. 15, 1994	BQ 2	Aug. 15, 2009	CW 8
Feb. 15, 1995	BR 0	Feb. 15, 2010	CX 6
Aug. 15, 1995	BS 8	Aug. 15, 2010	CY 4
Feb. 15, 1996	BT 6	Feb. 15, 2011	CZ 1

INTEREST COMPONENTS—Continued

Designation	CUSIP 912833	Designation	CUSIP No. 912833
Aug. 15, 1996	BU 3	Aug. 15, 2011	DA 5
Feb. 15, 1997	BV 1	Feb. 15, 2012	DB 3
Aug. 15, 1997	BW 9	Aug. 15, 2012	DC 1
Feb. 15, 1998	BX 7	Feb. 15, 2013	DD 9
Aug. 15, 1998	BY 5	Aug. 15, 2013	DE 7
Feb. 15, 1999	BZ 2	Feb. 15, 2014	DF 4
Aug. 15, 1999	CA 6	Aug. 15, 2014	DG 2

INTEREST COMPONENTS—Continued

Designation	CUSIP 912833	Designation	CUSIP No. 912833
Feb. 15, 2000	CB 4	Feb. 15, 2015	DH 0
Aug. 15, 2000	CC 2	Aug. 15, 2015	JT 8
Feb. 15, 2001	CD 0	Feb. 15, 2016	KG 4
Aug. 15, 2001	CE 8	Aug. 15, 2016	KJ 8
Feb. 15, 2002	CF 5	Feb. 15, 2017	KL 3
Aug. 15, 2002	CG 3	Aug. 15, 2017	KN 9
Feb. 15, 2003	CH 1	Feb. 15, 2018	KQ 2

INTEREST COMPONENTS—Continued

Designation	CUSIP 912833	Designation	CUSIP No. 912833
Aug. 15, 2003	CJ 7	Aug. 15, 2018	KS 8
Feb. 15, 2004	CK 4	Feb. 15, 2019	KU 3
Aug. 15, 2004	CL 2	Aug. 15, 2019	KW 9
Feb. 15, 2005	CM 0	Feb. 15, 2020	KY 5

BILLING CODE 4810-40-M

ATTACHMENT B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	31000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

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BILLING CODE 4810–40–C

[Department Circular—Public Debt Series—No. 4-90]

Treasury Notes of February 15, 2000, Series A-2000

Washington, February 1, 1990.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $10,000,000,000 of United States securities, designated Treasury Notes of February 15, 2000, Series A-2000 (CUSIP No. 912827 YN 6), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1 The Notes will be dated February 15, 1990, and will accrue interest from that date, payable on a semiannual basis on August 15, 1990, and each subsequent 6 months on February 15 and August 15 through the date that the principal becomes payable. They will mature February 15, 2000, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2 The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3 The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Director Book-entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR Part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1 p.m., Eastern Standard time, Wednesday, February 7, 1990. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, February 6, 1990, and received no later than Thursday, February 15, 1990.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted, in full, and then competitive tenders will be accepted starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting non-competitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders

received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Baks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Thursday, February 15, 1990. Payment in full must accompany tenders submitted by all other investors. Payments must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, February 13, 1990. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. If any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Note to be separated into the components described in Section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Note may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Notes. Once a Note has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payments on the Notes.

7.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A and B are

incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Notes of February 15, 2000, Series A–2000, CUSIP No. 912827 YN 6.

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series A–2000 due February 15, 2000, CUSIP No. 912820 AV 9.

INTEREST COMPONENTS

Designation	CUSIP No. 912833	Designation	CUSIP No. 912833
Treasury Interest (TINT) Due		Treasury Interest (TINT Due	
Aug. 15, 1990	BG 4	Aug. 15, 1995	BS 9
Feb. 15, 1991	BH 2	Feb. 15, 1996	BT 6
Aug. 15, 1991	BJ 8	Aug. 15, 1996	BU 3
Feb. 15, 1992	BK 5	Feb. 15, 1997	BV 1
Aug. 15, 1992	BL 3	Aug. 15, 1997	BW 9
Feb. 15, 1993	BM 1	Feb. 15, 1998	BX 7
Aug. 15, 1993	BN 9	Aug. 15, 1998	BY 5

INTEREST COMPONENTS—Continued

Designation	CUSIP No. 912833	Designation	CUSIP No. 912833
Feb. 15, 1994	BP 4	Feb. 15, 1999	BZ 2
Aug. 15, 1994	BQ 2	Aug. 15, 1999	CA 6
Feb. 15, 1995	BR 0	Feb. 15, 192000.	CB 4

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ATTACHMENT B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	31000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

[FR Doc. 90–3506 Filed 2–9–90; 4:09 pm]
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[Department Circular—Public Debt Series—No. 3-90]

Treasury Notes of February 15, 1993, Series S-1993

Washington, February 1, 1990.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $10,000,000,000 of United States securities, designated Treasury Notes of February 15, 1993, Series S-1993 (CUSIP No. 912827 YM 8), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

1.2. If the interest rate determined in accordance with this circular is identical to the rate on an outstanding issue of United States notes, and the terms and conditions of such outstanding issue are otherwise identical to the terms and conditions of the securities offered by this circular, this shall be considered an invitation for an additional amount of the outstanding securities and this circular will be amended accordingly. Payment for the securities in that event will be calculated on the basis of the auction price determined in accordance with this circular.

2. Description of Securities

2.1. The Notes will be dated February 15, 1990, and will accrue interest from that date, payable on a semiannual basis on August 15, 1990, and each subsequent 6 months on February 15 and August 15 through the date that the principal becomes payable. They will mature February 15, 1993, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denomations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1 p.m., Eastern Standard time, Tuesday, February 6, 1990. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, February 5, 1990, and received no later than Thursday, February 15, 1990.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender alloted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, .e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve

Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Thursday, February 15, 1990. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasurer; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing the United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, February 13, 1990. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 90-3507 Filed 2-9-90; 4:09 pm]

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DEPARTMENT OF VETERANS AFFAIRS

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 20-89, Request for Legal Opinion-Proper Interpretation of 38 U.S.C. 1781(a)

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—the proper interpretation of 38 U.S.C. 1781(a).

EFFECTIVE DATE: December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library (026H), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 20-89, Request for legal opinion-proper interpretation of 38 U.S.C. 1781(a), is as follows:

Held

Section 1781(a)(2) of title 38, United States Code, does not bar receipt of VA education assistance by a veteran paid salary as a full-time civilian employee of the Federal Government and whose training is also paid for under chapter 41 of title 5, United States Code, so long as the training is received during periods of the day other than those for which the salary is paid.

Dated: January 25, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-3411 Filed 2-13-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 31
Wednesday, February 14, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER 90–3165.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, February 15, 1990, 10:00 a.m.

THIS MEETING WILL BE OPEN TO THE PUBLIC:

The following item has been added to the above agenda:

Revised Draft of Allocation Regulations.

DATE AND TIME: Thursday, February 15, 1990, following the Open Meeting.

THIS MEETING WILL BE CLOSED TO THE PUBLIC.

PLACE: 999 E Street, NW., Washington, DC.

Due to extraordinary circumstances, and in accordance with 11 CFR 2.7(b), the Commission will hold a special closed meeting for the purpose of discussing matters concerning participation in civil actions or proceedings or arbitration.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: (202) 376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 90–3626 Filed 2–12–90; 3:07 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, February 20, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 9, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–3541 Filed 2–12–90; 8:45]

BILLING CODE 6210–01–M

POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on February 5, 1990, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for March 5, 1990, in Washington, DC. The members will (1) Discuss possible strategies in collective bargaining negotiations, (2) consider a capital investment for the Chicago Main Post Office and (3) consider a rate case filing with the Postal Rate Commission.

The meeting is expected to be attended by the following persons: Governors Alvarado, del Junco, Griesemer, Hall, Mackie, Nevin, Pace, Ryan and Setrakian; Postmaster General Frank, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Cox.

As to the first item, the Board determined that pursuant to section 552b(c)(3) of Title 5, United States Code, and § 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of title 39, United States Code.

As to the second item, the Board determined that, pursuant to section 552(c)(9)(B) of title 5, United States Code, and § 7.3(i) of title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information, the premature disclosure of which would significantly frustrate proposed procurement actions.

As to the third item, the Board determined that pursuant to section 552b(c)(3) of title 5, United States Code, and § 7.3(c) of title 39, Code of Federal Regulations, discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information in connection with proceedings under chapter 36 of title 39 (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code. The Board has determined further that pursuant to section 552b(c)(10) of title 5, United States Code, § 7.3(j) of title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and § 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3)(9)(B) and (10) of title 5, United States Code; section 410(c)(3) and (4) of title 39, United States Code; and § 7.3(c)(i) and (j) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 90–3538 Filed 2–12–90; 9:30 am]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 55, No. 31
Wednesday, February 14, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Cooperative Agreements Revised Procedures

Correction

In notice document 90-2804 beginning on page 4219 in the issue of Wednesday, February 7, 1990, make the following correction:

On page 4225, after the table, the signature and title were inadvertently omitted. They should read as set forth below.

Sim C. Mitchell,

Cooperative Agreement Program Manager, Small and Disadvantaged Business Utilization.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. FE-88-03; Notice 2]
RIN 2127-AC51

Light Truck Average Fuel Economy Standards Model Years 1992-94

Correction

In proposed rule document 90-2492 beginning on page 3608 in the issue of Friday, February 2, 1990, make the following correction:

On page 3609, in the second column, in the first complete paragraph, the third sentence should read "Therefore, in applying these credits earned previously against future shortfalls, the credits would be allocated according to the number of light trucks in the credit-earning class which would fall in the class subject to a civil penalty."

BILLING CODE 1505-01-D

federal register

Wednesday
February 14, 1990

Part II

Environmental Protection Agency

40 CFR Parts 261 and 302
Identification and Listing of Hazardous Waste; Reportable Quantity Adjustment; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 302

[FRL-3680-6]

RIN 2050-AC78

Hazardous Waste Management Systems; Identification and Listing of Hazardous Waste; Reportable Quantity Adjustment

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today amending the list of hazardous wastes from non-specific sources under 40 CFR 261.31 by modifying the scope of the EPA Hazardous Waste No. F019. The Agency is amending the F019 listing to exclude wastewater treatment sludges from the zirconium phosphating step, when such phosphating is an exclusive process in the aluminum can washing process, because the Agency believes that such sludges do not pose a substantial hazard to human health or the environment and should not be regulated as a listed hazardous waste. The Agency also is removing these zirconium phosphating sludges from the list of hazardous substances under Part 302.4. This modification to the F019 listing does not affect any other wastewater treatment sludges from the chemical conversion coating of aluminum.

DATE: This regulation becomes effective on February 14, 1990.

ADDRESSES: Copies of materials relevant to this final rulemaking are located at the RCRA docket at the U.S. EPA, 401 M Street, SW., Washington, DC 20460. The RCRA docket is located in Room SE 2427 and is open from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays; the public must make an appointment in order to review materials by calling (202) 475-9327. Refer to "Docket number F-89-F19P-FFFFF" when making appointments to review materials relevant to this rulemaking. The public may copy 100 pages from the docket at no charge; additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/CERCLA Hotline at (800) 424-9346 or, in the Washington, DC area, (202) 382-3000. For technical information on the RCRA portion of the rule, contact Ms. Denise A. Wright, Listing Section, Office of Solid Waste (OS-333) at (202) 245-3519. For technical information on the CERCLA portion of the rule, contact Ms. Ivette Vega, Response Standards and Criteria Branch, Emergency Response Division (OS-210) at (202) 475-7369. Both are available at U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background

On August 4, 1989, EPA proposed to amend its regulations under RCRA to modify the scope of the F019 hazardous waste listing to exclude wastewater treatment sludges from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process (54 FR 32320). The Agency proposed to exclude these wastes because they do not pose a substantial hazard to human health and the environment and should not be regulated.

EPA originally listed wastewater treatment sludges from the chemical conversion coating of aluminum as F019 due to its belief that these processes used complexed cyanides and chromium and typically resulted in hazardous sludges. The Agency later learned, however, that one of the chemical conversion coating processes—zirconium phosphating performed during the washing of aluminum cans—is not expected to result in hazardous wastewater treatment sludges.

After reviewing the process chemistry, typical conversion coating solutions used, and analytical data, the Agency concluded that, although the sludge currently meets the F019 listing description, this sludge should not have been included in the F019 listing because it is not hazardous. No hazardous constituents (listed in appendix VIII of 40 CFR part 261) are contained or used in this conversion coating step, except for hydrofluoric acid. The zirconium phosphate solution typically used includes fluorozirconic acid (as a source of zirconium), nitric and hydrofluoric acids, and phosphoric acid. The hydrofluoric acid, which is present in the can washing wastewater in low concentrations that are readily treated, is chemically converted in the wastewater treatment process into calcium fluoride or calcium aluminum fluoride, which is non-hazardous. Thus, the slightly alkaline sludge would not be expected to contain any hazardous constituents, nor exhibit any of the characteristics of hazardous waste. The Agency's review of analytical data on these wastewater treatment sludges did not indicate the presence of significant concentrations of Appendix VIII constituents. Additionally, the data showed that these sludges do not exhibit any hazardous waste characteristics. The Agency is, therefore, amending the F019 listing to exclude the wastewater treatment sludges from the zirconium phosphating step of the aluminum can washing process.

This final exclusion applies only to sludges from processes that exclusively use zirconium phosphating solutions that do not contain chromium or cyanides. Further, these processes are not associated with electroplating or conversion coating steps where hazardous constituents are used. For example, if a can maker employs a chromating step, separately or in conjunction with such zirconium phosphating, the wastewater treatment sludges would meet the F019 listing and would not be excluded under this rulemaking.

As a result of this final exclusion, two delisting petitions that have been filed under 40 CFR 260.20 and 260.22 are unnecessary, since the wastes described in the petitions are not the F019 wastes. The two petitions are #0742 and #0743, which were filed by Continental Can Company for their Glendale, Wisconsin and LaCrosse, Wisconsin facilities, respectively. The Agency intends, therefore, to take no further action on these petitions.

II. Response to Comments

EPA received eight comments on the Agency's proposal to exclude wastewater treatment sludges from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. All commenters supported the Agency's proposal. Two commenters, however, requested that EPA modify the proposed wording to exclude other zirconium-based conversion coating processes. The commenters claimed that these other zirconium processes do not contain hazardous constituents but did not provide any data to support their contention that the sludges from these processes are substantially equivalent to those covered by today's rule.

As stated in our proposal, the Agency recognizes that there may be other

wastewater treatment sludges from conversion coating processes falling within the scope of F019 which may not, in fact, contain or produce hazardous constituents. Because EPA does not have data on such wastes, the Agency did not propose to exclude them from the F019 listing. Thus, today's final rule does not address such wastes.

III. Relationship to Other Regulatory Authorities

All hazardous wastes listed pursuant to 40 CFR 261.31 through 261.33, as well as any solid waste that meets one or more of the characteristics of a RCRA hazardous waste (as defined in 40 CFR 261.21 through 261.24), are hazardous substances as defined at section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. The CERCLA hazardous substances are listed at 40 CFR 302.4 along with their reportable quantities (RQs). CERCLA section 103(a) requires that persons in charge of vessels or facilities from which a hazardous substance has been released in a quantity that is equal to or greater than its RQ shall immediately notify the National Response Center of the release. In addition, section 304 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires the owner or operator of a facility to report the release of a hazardous substance or an extremely hazardous substance to the appropriate state emergency response commission (SERC) and to the local emergency planning committee (LEPC) when the amount released equals or exceeds the RQ for the substance, or one pound when no RQ has been set.

Effective today, the description of hazardous waste stream F019 in Table 302.4 is amended to exclude wastewater treatment sludges from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. These zirconium phosphating sludges are no longer listed hazardous substances under CERCLA sections 101(14) and 102(a). Reporting of releases of sludge from the zirconium phosphating of aluminum cans process is no longer required, except as indicated below, under either section 103 of CERCLA or section 304 of SARA. Although the Agency has no reason to believe that releases of zirconium phosphating sludges will contain hazardous constituents subject to reporting under section 103 of CERCLA or section 304 of SARA, the Agency reminds the regulated community that reporting of releases of such sludges is required if a hazardous substance (which is contained as a constituent of the sludge) is released to the environment above its RQ. Reporting also is required when the wastewater treatment sludge meets one or more of the characteristics of unlisted hazardous waste for ignitability, corrosivity, reactivity, or EP Toxicity and 100 pounds or more is released to the environment (50 FR 13456, April 4, 1985).

The existing 10-pound RQ of waste stream F019 is not affected by this rule, except for the exclusion of sludges from processes that use only zirconium phosphating. Releases of wastewater treatment sludges from the chemical conversion coating of aluminum (other than from exclusive zirconium phosphating) remain subject to the reporting requirements of section 103 of CERCLA and section 304 of SARA when a RQ or more is released to the environment.

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains inspection authority under section 3007 and enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized States at the same time that they take effect in non-authorized States. The rulemaking promulgated today is not imposed pursuant to HSWA.

B. Effect on State Authorizations

Today's final rule is not effective in authorized States since the regulations are not being imposed pursuant to HSWA. Thus, the regulation is applicable only in those States that do not have interim or final authorization. In authorized States, the regulations will not be applicable until the State revises its program to adopt equivalent regulations under State law.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to include equivalent regulations within a year of promulgation of these regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal regulations that are more stringent or broader in scope than the existing Federal regulations. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. This is a result of section 3009 or RCRA, which allows States to impose regulations in addition to those in the Federal program. The regulations promulgated today at 40 CFR 261.31 are considered to be less stringent or to reduce the scope of the existing Federal regulations. Therefore, authorized States are not required to modify their programs to adopt regulations equivalent or substantially equivalent to the provisions listed above.

V. Effective Date

This rule is effective February 14, 1990. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six month period to come into compliance. This is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the regulated community by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, this rule is effective February 14, 1990. This modification to

the listing is retroactive with regard to the above described previously generated zirconium wastes, because these particular wastes should not have been included within the scope of the 1980 listing. Thus, where this rule applies, EPA does not consider such wastes, whenever they were generated, to be F019. EPA's decision, however, does not affect authorized State regulation of such waste if a State's regulation is more stringent or broader in scope.

VI. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This final rule reduces the regulatory requirements applicable to the regulated community. It is not major because it will not result in an effect on the economy of $100 million or more, nor will it result in a major increase in costs or prices to individual industries, consumers, Federal, State or local government agencies, or geographic regions. Finally, there will be no adverse impact on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, this final amendment is not a major regulation, and no Regulatory Impact Analysis has been conducted.

This final amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

VII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking, for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This final amendment will not have a significant economic impact on small entities since it reduces regulatory requirements. Accordingly, I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

This final rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects

40 CFR Part 261

Hazardous wastes, Recycling.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, and Recycling.

Dated: February 1, 1990.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority. Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6905, 6912(a), 6921 and 6922).

2. Section 261.31 is amended by revising entry "F019" to read as follows:

§ 261.31 Hazardous waste from non-specific sources.

* * * * *

Industry and EPA Hazardous Waste No.	Hazardous Waste	Hazard Code
* *	* *	*
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.	(T)
* *	* *	*

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

3. The authority citation for part 302 continues to read as follows:

Authority: Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9602; sections 311 and 501(a) of the Federal Water Pollution Control Act, 33 U.S.C. 1321 and 1361.

4. Table 302.4 of § 302.4 is amended by revising the description of Hazardous waste stream F019 under the heading "Hazardous Substance" to read as follows:

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[See footnotes at end of Table 302.4]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code	RCRA Waste Number	Category	Pounds (kg)
* * *	*	*	*		*	*	
F019: Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process	*	*	*	*	*	*	*
* * *	*	*	*		*	*	

[FR Doc. 90-3253 Filed 2-13-90; 8:45 am]

BILLING CODE 6560-50-M

federal register

Wednesday
February 14, 1990

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 49

Federal Acquisition Regulation (FAR); Thresholds; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 49

Federal Acquisition Regulation (FAR); Thresholds

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR 49.101, 49.107, and 49.108–4 to raise or delete several dollar thresholds.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before April 16, 1990, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW. room 4041, Washington, DC 20405.

Please cite FAR Case 90–07 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 523–4755. Please cite FAR Case 90–07.

SUPPLEMENTARY INFORMATION:

A. Background

Dollar thresholds in FAR part 49 were reviewed for currency, consistency, clarity, and necessity. Revisions proposed are intended to balance prudent control and efficient operations, while streamlining operations. Giving consideration to inflation and the resulting increased costs, several thresholds were found to be outdated and were revised, raised, or removed where outdated or irrelevant.

Proposed revisions include (a) increasing the threshold in 49.101(c) from $2,000 to $5,000 for the cost of the undelivered balance of a contract, below which the Government normally would not terminate, but rather run to completion; (b) deleting the threshold in 49.101(d), which requires particular attention to settlements estimated at less than $100,000, involving small business concerns, thus requiring particular attention to all settlements involving small business concerns; (c) increasing the threshold in 49.107(a) and (b) to $100,000 for mandatory audit review of a prime contract and a subcontract settlement proposal; and (d) increasing the threshold in 49.108–4(a)(1), from $25,000 to $100,000, and deleting the threshold in 49.108–4(e), allowing the Termination Contracting Officer to increase the authorization granted under 49.108–4(a) as deemed appropriate.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule applies either to the internal operating procedures of the Government or generally to large contractors. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. However, comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 89–610 (FAR Case 90–07) in correspondence.

c. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 49

Government procurement.

Dated: February 2, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 49 be amended as set forth below:

PART 49—TERMINATION OF CONTRACTS

1. The authority citation for 48 CFR 49 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 49.101 is amended in paragraph (c) by removing the figure "$2,000", and inserting in its place "$5,000", and by revising in paragraph (d) the second sentence to read as follows:

§ 49.101 Authorities and responsibilities.

* * * * *

(d) * * * Auditors and TCO's shall promptly schedule and complete audit reviews and negotiations, giving particular attention to the need for timely action on all settlements involving small business concerns.

* * * * *

49.107 [Amended]

3. Section 49.107 is amended in paragraph (a) by removing in the first, second, and fifth sentences the figure "$25,000" and in paragraph (b)(1) the figure "50,000", and inserting in all four places the figure "$100,000".

4. Section 49.108–4 is amended in paragraph (a)(1) by removing the figure "$25,000" and inserting in its place "$100,000", and by revising in paragraph (e) the first sentence to read as follows:

49.108–4 Authorization for subcontract settlements without approval or ratification.

* * * * *

(e) Upon written request of the contractor, the TCO may increase an authorization granted under subparagraph (a)(1) of this subsection to authorize the contractor to conclude settlements under a particular prime contract. * * *

* * * * *

[FR Doc. 90–3414 Filed 2–13–90; 8:45 am]

BILLING CODE 6820–JC–M

federal register

Wednesday
February 14, 1990

Part IV

Oversight Board
Resolution Trust Corporation

12 CFR Parts 1506 and 1606

Qualification of, Ethical Standards of Conduct for, and Restrictions on the Use of Confidential Information by Independent Contractors; Final Common Rule

OVERSIGHT BOARD

12 CFR Part 1506

RESOLUTION TRUST CORPORATION

12 CFR Part 1606

RIN 3205-AA01

Qualifications of, Ethical Standards of Conduct for, and Restrictions on the Use of Confidential Information by Independent Contractors

AGENCY: Oversight Board and Resolution Trust Corporation.

ACTION: Final common rule.

SUMMARY: On November 28, 1989 (54 FR 49038), the Oversight Board and the Resolution Trust Corporation ("RTC") published for public comment proposed rules to establish the minimum qualifications, ethical standards of conduct, and the restrictions on the use of confidential information applicable to independent contractors who seek to contract or provide services to the RTC in connection with its management and resolution of failing and failed thrift institutions.

The Oversight Board and the RTC now promulgate a joint final rule pursuant to the requirement of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") that rules and regulations applicable to independent contractors be promulgated not later than 180 days after the date of enactment of the relevant statutory provisions. It is intended that independent contractors be required to observe appropriate ethical standards that preserve the integrity of the system and, at the same time, assure utilization by the RTC of the services of the private sector to the extent that such services are available and their utilization by the RTC is practicable and efficient.

The regulations establishing minimum standards of competence, experience, integrity, and fitness are prescribed by the Oversight Board and are incorporated by the RTC in its rule.

EFFECTIVE DATE: February 5, 1990.

FOR FURTHER INFORMATION CONTACT: Katherine A. Corigliano, Assistant Executive Secretary (Ethics), Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429, (202) 898-7272, or Lawrence Hayes, Office of General Counsel, Oversight Board, 1825 Connecticut Avenue NW., Washington, DC 20232, (202) 376-5490.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this final common rule have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 3205-0001, which expires January 31, 1993. The estimated burden for the collections of information imposed by these regulations is summarized as follows: Number of respondents, 15,000 for the first year, 5,000 for the second year, and 5,000 for the third year; hours per response per qualification, 5; contracts let per year, 6,000; and 15 bids per contract at one (1) burden hour per bid, yielding an additional 90,000 burden hours per year. Comments concerning the accuracy of these burden estimates and suggestions for reducing this burden should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; and to the Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, 550 17th Street NW., room 6090, Washington, DC 20429. The collections of information proposed by these regulations are contained in §§ _____.4, _____.6, _____.7 and _____.10. As a group, the collections are entitled "Fitness and Integrity Certifications for Independent Contractors with RTC." This information will be used by the RTC to (1) Determine if a competing contractor is barred by statute from doing business with the RTC and (2) evaluate competing contractors' fitness and integrity.

Background

FIRREA, enacted on August 9, 1989, amended the Federal Home Loan Bank Act, 12 U.S.C. 1421 *et seq.*, by adding section 21A, which establishes the Oversight Board and the Resolution Trust Corporation ("RTC"). Section 21A(b) provides that, in carrying out the duties of the RTC, the services of independent contractors shall be utilized if deemed practicable and efficient by the RTC.

To ensure that independent contractors act for the public good, Congress required the Oversight Board to prescribe regulations to ensure that the independent contractors employed by the RTC meet minimum standards of competence, integrity, fitness, and experience. Congress required both the Oversight Board and the RTC to promulgate rules and regulations applicable to independent contractors governing conflicts of interest, ethical responsibilities and the use of confidential information consistent with the goals and purposes of titles 18 and 41 of the United States Code.

Proposed rules to implement these congressional requirements were issued jointly by the Oversight Board and the RTC on November 28, 1989 (54 FR 49038). The proposed rules provided interpretations of the restrictions established by Congress for mandatory ineligibility to contract with the RTC. They also provided a procedure whereby persons who sought to contract with the RTC could demonstrate that they met minimum standards of competence, experience, fitness, and integrity by providing information and certifications relating to themselves and their related entities. The proposed regulations required the RTC to disqualify those contractors ineligible to contract with the RTC pursuant to congressional direction, and permitted it to determine when contractors who are not disqualified by congressional requirements should, nevertheless, be deemed ineligible to contract with the RTC because of their past activities. In addition, the proposed rules provided for the establishment of committees within the RTC which would address conflict questions resulting from the application of these regulations.

Further, the proposed regulations dealt with requirements applicable to contracts entered into with qualified contractors. They set forth the information and certifications regarding organizational and personal conflicts which qualified contractors would be required to provide in connection with obtaining specific contracts, general standards for independent contractor activities, limitations on concurrent and subsequent activities of contractors, provisions to maintain the integrity of the contracting process, requirements to protect the confidentiality of information, and provisions dealing with the rescission of contracts.

General comments

Fifty-six comments to the proposed rules were received during the comment period. In general, the commenters supported high ethical standards for the program, but most took issue with the scope of applicability of one or more provisions of the proposed regulations. Many commenters sought greater specificity and explication of the requirements, pointing out the inconsistencies of some of the provisions.

The two provisions which generated the most public comment were the definitions of "pattern or practice of defalcation" and "substantial loss to the federal deposit insurance funds"

Virtually all who commented on these definitions disagreed with them. Almost all of them thought that a substantial loss to the insurance funds should be more than $50,000, and that losses should not be aggregated if they did not result from fraud or misconduct. A number argued that the definition of "pattern or practice of defalcation" unfairly penalized prospective contractors in Texas because of the lack of an anti-deficiency statute in that state.

Commenters were also concerned about the fairness and reasonableness of the administration of the contracting program. Specifically, they commented on the need for appeal procedures for discretionary disqualifications, the possible lack of uniformity of decisionmaking delegated to regional and consolidated offices of the RTC, and the fairness with which the power to rescind contracts would be administered. A number of commenters were also concerned about the confidentiality of the information they provided to the RTC.

Many commenters were concerned about the need for specificity for certification requirements with regard to organizational and personal conflicts of interest. Some suggested the use of limiting language such as "knowingly" in connection with the employment of eligible persons, and "to the best of knowledge and belief" when making certifications. Some proposed a presumption of good faith compliance when they relied on certification from related entities of subcontractors.

Certain professions or types of organizations focused on their unique concerns. Real estate brokers were interested in the applicability of the rules to salespersons who are deemed by law to be subagents of the broker. Lawyers questioned the possible need to obtain information from their clients and the scope of information that was to be required from all associates in their firms. Accounting firms and other organizations questioned the need for certification relating to involvement in ongoing actions with a federal deposit insurance agency or the RTC or actions in which the plaintiff has made allegations that they have engaged in fraudulent activities.

There was also substantial concern about how the restrictions on concurrent and subsequent activities would be administered. Lawyers were concerned that advising the RTC on a matter should not prohibit them from subsequently litigating the same matter for the Corporation. Asset managers with multiple divisions wanted to know whether one division could manage a property and another present an offer. A number of commenters thought the restrictions were counterproductive. Some suggested the use of screening devices as a means of eliminating absolute prohibitions.

A few commenters complained of the paperwork burden which compliance with the regulations would entail. Several claimed that the regulations required contractors to do too much without any certainty of obtaining a contract with the RTC. A handful of commenters thought that contractors should be subject to differing standards depending on their functions. Some suggested more limited review of contractors who already are subject to oversight by a regulatory body.

The provisions which provoked the most comment were those dealing with the interpretation of the standards for mandatory ineligibility, the conflict of interest provisions, the restrictions on concurrent and subsequent activities of contractors, and the provision for rescission of contracts. It is changes to those provisions which account for the major revisions of this regulation.

General concerns

Some of the comments received dealt with the overall contractor program rather than the requirements of a particular section. Several commenters complained of the paperwork burden generated by these regulations, with a few noting that it required a contractor to do too much without the likelihood of obtaining a contract. Some commenters suggested differing standards for contractors depending on their functions and relief from certain of the requirements for those contractors who were already supervised by a Government regulatory body.

In fashioning the regulations which the RTC would apply to its contracting program, the Oversight Board and the RTC considered the burden of the regulations on prospective contractors. It was concluded that all contractors must meet the same standards, and that qualification of contractors, primarily based on certification, subject to investigation and confirmation, would be the least burdensome approach to ensuring that contractors met the standards for fitness, integrity, competence, and experience set by the Oversight Board. Moreover, while current supervision by a regulatory body may be an appropriate consideration in some circumstances, it cannot substitute for a determination made by the RTC.

In addition, since the process is divided into two parts, contractors do not have to concern themselves with conflict of interest requirements until they bid on a specific contract. Contractors who wish to qualify to contract with the RTC must provide the required information and certifications to insure that they meet minimum standards of competence, experience, fitness, and integrity. Failure to provide one or more required certifications does not *per se* prevent the contractor from qualifying. Once qualified, a contrator may then bid on any contract with the RTC it is competent to perform or serve as a subcontractor on a contract with the RTC. Information to satisfy conflict of interest requirements need not be provided until a bid is made on a specific contract.

Other general concerns expressed about the contracting program related to the confidentiality of information provided to the RTC and the uniformity of decisions made in the RTC's various field offices by delegated authority.

As to the uniformity of decisionmaking, the RTC will be establishing internal guidelines to ensure that decisionmaking throughout the country will be made in accordance with the same standards.

The regulations have also been made more specific as to the type of contracts to which they are applicable. The services covered do not include *de minimis* contracts, contracts for the day-to-day operations of the RTC, for the routine maintenance and supplies necessary to maintain an asset, for electronic data processing services, or real estate brokers' commissions resulting from non-exclusive offerings.

Disqualification of Contractors

Congress barred certain classes of persons from contracting with the RTC. Persons who are subject to those statutory bars are those who have:

(i) Been convicted of a felony;

(ii) Been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any federal banking agency;

(iii) Demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions; or

(iv) Caused a substantial loss to the federal deposit insurance funds.

The proposed regulations indicated that these statutory bars would be interpreted strictly. The proposed regulations stated that, to have demonstrated a pattern or practice of defalcation, a person must be subject to continuing legal claims arising from two or more uncured defaults that are alleged to have resulted in losses aggregating in excess of $50,000 to one

or more financial institutions. "A substantial loss to federal deposit insurance funds" was deemed to be a loss of $50,000 or more, "and to have caused a loss," a person must be subject to an outstanding final judgment obtained or held by one of the federal deposit insurance funds or the RTC or, if the insurer has a continuing legal claim, it must have suffered a substantial loss as a result of the disposition of an asset.

Most commenters advocated the inclusion of an intent element in interpreting "pattern or practice of defalcation." In addition, a number of commentators noted that, because of the lack of an anti-deficiency statute in Texas, borrowers in that State continue to be legally liable in situations in which a borrower in another state might have shed liability. In addition, a number of these same persons believed that $50,000 was too low an amount to be used as a benchmark figure and losses to the fund should only be aggregated if they were related to fraud or misconduct.

Based on the comments, the Oversight Board has concluded that the definitions of "defalcation" and "pattern or practice of defalcation" should be revised. Although no less stringent, the amended definitions do address some of the concerns of the commenters.

The definitions of "defalcation" and "pattern or practice of defalcation" have been expanded. The definition of "defalcation" has been subdivided into three subparagraphs: One new subparagraph includes an intent element; the other new subparagraph covers a defaulting borrower who is involved in unsafe or unsound practices.

A "pattern or practice of defalcation" will be deemed to exist when there are two or more instances of defalcation. This definition ensures that persons will be held ineligible to contract with the RTC not only if they are subject to continuing legal claims arising from their defaults, but also if they engaged in acts which were intended to cause a loss to an insured depository institution or defaulted on loans that they knew or should have known were unsafe or unsound.

The RTC will be able to review the default records of prospective contractors to determine whether they should be deemed to have engaged in a pattern or practice of defalcation. State laws must remain relevant to the question of continuing liabilty of a defaulting borrower, and, therefore, to the status of some potential contractors. This is not unfair since these rules of liabilities were known to lenders and borrowers when the loans were made. Bu the new definitions more clearly provide for the disqualification of those involved in unsafe and unsound practices, regardless of continuing personal liability on an obligation.

While a number of the commenters believed that $50,000 is too low an amount to be deemed a substantial loss to the federal deposit insurance funds, the Oversight Board continues to believe that is the appropriate benchmark to set.

A number of commenters questioned the requirement that contractors who wish to qualify to contract with the RTC make certifications that neither they nor their related entities are parties to a proceeding in which they are alleged to have engaged in fraudulent activity or are parties to a lawsuit in which the FDIC, FSLIC, an insured depository institution under the RTC's jurisdiciton or the RTC is seeking $50,000 or more. Some commenters argued that, in litigation with certain professionals, it is common for plantiffs to include an allegation of fraud. The Oversight Board recognizes that information about pending cases may have limited utility. However, before the RTC determines that a person meets minimum standards of integrity and fitness, it is important that it obtain as much information as possible that bears on that determination. Contractors must bear in mind that they are not deemed ineligible to contract with the agency merely because they cannot make all the necessary certifications. The regulations clearly state that contractors who cannot provide the required certifications shall provide explanations.

Two commenters maintained that the regulations incorrectly interpreted the statute by prohibiting contractors who have been convicted of a felony from contracting with the RTC. They asserted that the statute used the narrower word "individual" rather than the more inclusive term "person" in describing the class with whom the RTC was prohibited from contracting, thereby evidencing Congress's intention not to prohibit contracting with a corporation convicted of a felony. The Oversight Board has determined that the regulations would continue to specifically prohibit individuals who have been convicted of a felony from contracting with the RTC and require disclosure of felony convictions by prospective corporate contractors.

A group of commenters complained of the lack of appeal procedures for contractors who are deemed ineligible to contract by the RTC in the exercise of its discretionary authority. The final regulations state that the RTC will institute procedures to provide appropriate review of discretionary disqualifications.

Definitions

Some commenters complained about certain of the definitions or, in one case, the lack of a definition. Many thought that the definition of "competing property" needed to include a geographical element. While the inclusion of a geographic element in the definition of competing property was considered, it was not provided initially because geographic markets are not uniform. They can range from several blocks in a city to miles in a rural area. However, the definition of competing property has been revised to require that the competing property be in the same geographic market. The precise scope of the geographic market will be defined in each solicitation.

Some commenters requested clarification of the definition of "related entity." That has been done. A related entity is now defined as the contractor's management officials (individuals with substantial responsibility for the direction and control of the contractor's policies and operations), any individual or entity that controls, or is controlled by or is under common control with the contractor, and any other entity that will perform work on the contract that is controlled by any of the contractor's management officials.

The lack of a definition for "personal conflict of interest" provoked complaints from some commenters. That defintion is now provided. Further, the definition of "organizational conflict of interest" was criticized by the General Accounting Office because it focused only on intra-organizational interests which could impair the ability to objectively perform contract work. Other commenters did not think that they could make the necessary certification regarding the absence of organizational conflicts, *i.e.*, that performance of the contract would not provide the contractor with an advantage unintended by the contract. They cited the possibility of gains such as the development of expertise in a particular area which would benefit a firm.

The definition has been revised to address both these concerns. "Organizational conflict of interest" is now defined to mean a situation in which (i) Performance by the contractor or a related entity of a previous contract with the RTC or the Oversight Board may provide the contractor or any related entity with an unfair competitive advantage in obtaining this contract; or (ii) the contractor or a related entity has

an interest or relationship which would adversely affect the contractor's ability to perform under the contract or to represent the RTC.

Conflicts of interest

A number of persons complained about the lack of clarity of the conflict of interest section. In particular, they cited the lack of a definition for personal conflict of interest, the use of both the terms "person" and "person who exercises discretion," and the extent to which contractors could certify to information obtained from employees.

A definition of personal conflict of interest is included in the final regulations. The term "key employee" has replaced "person" and "person who exercises discretion". The final regulations also make it clear that, unless contractors have reason to believe that information provided by management officials and key employees is false or inaccurate, they may rely on such information in making determinations with regard to personal conflicts of interest.

Several commenters suggested language which would limit the contractor's liability when certifications were based on information obtained from others. The Oversight Board and the ROTC recognize that in some cases that might be appropriate. Therefore, in making certifications regarding the personal conflicts of interest of management officials and key employees, the contractor may rely on the information provided by those individuals except to the extent that the contractor has reason to believe the information provided is false or inaccurate. However, with regard to organizational conflicts, the certification required of the contractor is absolute, *i.e.*, that the contractor has no organizational conflicts of interest. The contractor is also required to obtain certifications from its related entities regarding the lack of organizational conflicts and is required to certify, in addition, that the contractor has no knowledge of any organizational conflicts of a related entity.

An RTC contractor is not barred from sitting on an Advisory Board of the RTC, but must, of course, observe any applicable regulatory restrictions and requirements.

In response to a concern that several law firms expressed about disclosure requirements which would violate lawyers' ethical obligations, the obligation to make information available to the agency has been amended to except disclosures prohibited by law.

Two suggestions relating to conflict of interest requirements made by the General Accounting Office ("GAO") have also been implemented. The GAO suggested that the time for retention of information on which certifications are based be changed from two years to three years. That has been done. The GAO also suggested that the conflict of interst provisions in §§ _____.6, _____.7, and _____.8 be applied to subcontractors as well as contractors. The final regulations define contractors for purposes of §§ xxxxxx.6, _____.7, and _____.8 to include a subcontractor.

Limitations on concurrent and subsequent activities

A number of commenters sought clarification and changes in the limitations imposed on a contractor's concurrent and subsequent activities to prevent undue advantage. In general, commenters saw these provisions as unduly restrictive and not necessarily in the RTC's best interests. Several law firms raised the question whether the restriction on being hired to implement a plan of action which the firm developed would prevent them from being engaged to litigate matters on which they previously advised the RTC.

The Oversight Board and the RTC continue to believe that restrictions to prevent undue competitive advantage are important. However, they recognize the need for additional flexibility to better serve the RTC's interests. Accordingly, the final regulations, while still prohibiting a contractor who is engaged to develop a plan of action concerning a specific institution from entering into a subsequent contract with the RTC to implement its recommendations, contain a proviso permitting the RTC simultaneously to engage a single contractor both to develop and implement a plan of action. In addition, information concerning possible waivers, which was contained in a footnote in the proposed regulations has been placed in a separate paragraph _____.9(b) concerning waivers. This paragraph makes it plain that, when the RTC determines that the need for restrictions is obviated, such as by the use of effective screening measures or competitive bidding procedures, waivers may be obtained.

In addition, a new subparagraph _____.9a)(4) has been added to this section to cover those situations not covered by the specific types of restrictions already detailed. This new paragraph provides that additional limitations may be imposed on a case-by-case basis when the RTC concludes that a contractor may gain an unfair competitive advantage, or a particular concurrent or subsequent activity would raise a significant appearance of impropriety. In situations where the RTC takes such action it will notify the contractor prior to entering into the contract.

Recission of Contracts

Several commenters stated that the RTC's imposition of an automatic permanent bar from contracting with it after it rescinds a contract was too harsh. Suggestions for possible changes were to provide the Contractors' Conflicts Committee with waiver authority and to provide for differentiation between intentional wrongdoing and negligence in deciding to rescind a contract.

It has been concluded that the imposition of a permanent bar from contracting with the RTC may be appropriate when it determines that rescission of a contract is appropriate. However, as this may not be warranted in all cases, the final regulations permit the Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee to determine if and when such bar may be lifted.

Contractors should recognize that, while § _____.14 spells out those situations in which the RTC may rescind a contract, it does not require rescission in all situations. It would, of course, be unwise for the RTC to rescind contracts arbitrarily or in a situation in which the contractor bore no responsibility for a changed circumstance. Nevertheless, contractors should be on notice that the RTC will not hesitate to rescind contracts in appropriate cases.

E.O. 12291

It has been determined that these regulations do not constitute a major rule for purposes of E.O. 12291.

Regulatory Flexibility Analysis

The Oversight Board and the RTC hereby certify that the final common rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Accordingly, a regulatory flexibility analysis is not required. The regulations establish rules to be used by the RTC to (1) Determine if a competing contractor is barred by statute from doing business with the RTC and (2) evaluate a competing contractor's fitness and integrity.

Regulations Promulgation

The Oversight Board and the RTC are promulgating identical regulations applicable to independent contractors

governing conflicts of interest, ethical responsibilities and the use of confidential information consistent with the goals and purposes of titles 18 and 41 of the United States Code and are proposing to codify these regulations in their respective parts of title 12 of the Code of Federal Regulations. Since the regulations are identical, the text of the regulations is set out only once at the end of the common preamble. The part heading, table of contents, and authority citation for the regulations as they will appear in each CFR title follow the text of the final common rule. The entire text of the regulation will appear in the respective parts of the Code of Federal Regulations of both the Oversight Board and the RTC. Sections _____.4, and _____.5, relating to the minimum standards of competence, integrity, fitness, and experience of independent contractors serving the RTC, are prescribed by the Oversight Board pursuant to FIRREA and are incorporated by the RTC in its rules.

The 30-day delayed effective date that normally applies to the issuance of final rules required by 5 U.S.C. 553(d) is hereby waived as permitted by 5 U.S.C. 553(d)(3) in that the Oversight Board and the RTC find that good cause for the waiver exists due to the mandate of FIRREA that these regulations be effective by February 5, 1990.

Text of Final Common Rule

The text of the final common rule, as adopted by the agencies in this document, appears below:

PART _____ QUALIFICATION OF, ETHICAL STANDARDS OF CONDUCT FOR, AND RESTRICTIONS ON THE USE OF CONFIDENTIAL INFORMATION BY INDEPENDENT CONTRACTORS

Sec.

§ _____.1 Authority, purpose, and scope.

(a) *Authority.* This part is adopted pursuant to section 21A(p) of the Federal Home Loan Bank Act, as added by section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101–73, section 501, 103 Stat. 183, 363 (to be codified at 12 U.S.C. 1441a(p)); section 21A(b) (4) and (12) of the Federal Home Loan Bank Act, as added by section 501 of FIRREA, Pub. L. No. 101–73, section 501, 103 Stat. 183, 363 (to be codified at 12 U.S.C. 1441a(b) (4) and (12)); and section 11(d) of the Federal Deposit Insurance Act, as amended by section 212 of FIRREA, Pub. L. No. 101–73, section 212, 103 Stat. 183, 222 (to be codified at 12 U.S.C. 1821(d)). Pursuant to those sections, the Oversight Board and the Resolution Trust Corporation are promulgating rules and regulations applicable to independent contractors governing conflicts of interest, ethical responsibilities, the use of confidential information consistent with the goals and purposes of titles 18 and 41 of the United States Code, and minimum standards of competence, experience, integrity, and fitness.

(b) *Purpose.* These regulations seek to ensure that contractors meet minimum standards of competence, integrity, fitness, and experience and are held to the highest standards of ethical conduct in performing services for the RTC. They are intended to prevent:

(1) The direct or indirect use of information gained through performance of a contract with the RTC for personal gain not contemplated by the contract; and

(2) The use of personal relationships or improper influence to gain unfair competitive advantage in obtaining contracts with the RTC.

(c) *Scope.* These regulations apply to contracts for services entered into by the RTC, after the effective date of these regulations, with law firms, accounting firms, investment banking firms, real estate brokers, appraisers, asset managers, property managers, leasing agents, and others performing similar services on behalf of the RTC. Except for contracts for legal, accounting, or investment banking services, contracts with a single contractor attributable to the Corporation, a single conservatorship, or a single consolidated field office, in which payments over the course of one year are not expected to aggregate in excess of $25,000, are not subject to these regulations. Further, these regulations shall not apply to contracts for day-to-day operations, routine maintenance, or the provision of electronic data processing services for the RTC, and shall not apply to real estate brokers' commissions resulting from nonexclusive offerings.

§ _____.2 Definitions.

As used in this part:

(a) *Competing property* means real property which has the same general character as an asset which is the subject of a contract between the contractor and the RTC, is in the same geographic market as defined in the solicitation, and in which the contractor or a related entity has 25 percent or greater ownership interest.

(b) *Contractor* means the individual or entity submitting an offer to perform services for the RTC or having a contractual arrangement with the RTC to perform services but does not include special government employees. For the purposes of §§ _____.6, _____.7, and _____.8, "contractor" includes a subcontractor.

(c) *Defalcation* means:

(1) Any default on any obligation to pay principal or interest to an insured depository institution; or

(2) Any act that was intended to cause a loss to an insured depository institution; or

(3) A borrower's entering into a loan agreement with an insured depository institution, the making of which was an unsafe or unsound action of the institution on the basis of facts that the borrower knew or should have known, and the borrower's default on such loan in the amount of $50,000 or more.

(d) *Default* means:

(1) A delinquency of 90 or more days as to payment of principal or interest on a loan or advance from an insured depository institution; or

(2) A failure to comply with the terms and conditions of a contract with the FDIC, the FSLIC, or the RTC, or an insured depository institution, other than a loan or advance.

(e) *FDIC* means the Federal Deposit Insurance Corporation in its corporate or receivership capacity or as conservator of an insured depository institution.

(f) *FSLIC* means the former Federal Savings and Loan Insurance Corporation and the Federal Savings and Loan Insurance Corporation Resolution Fund.

(g) *Loss* means:

(1) An obligation as to which there is a continuing legal claim that is owed to an insured depository institution, or to Federal deposit insurance funds, FSLIC, or to the RTC that is 12 months or more delinquent as to principal or interest; or

(2) An obligation to pay an outstanding, unsatisfied, final judgment based on any legal theory in favor of any insured depository institution, Federal deposit insurance funds, FSLIC, or the RTC.

(h) *Management official* means those individuals within a contractor's organization who have substantial responsibility for the direction and control of the contractor's policies and operations. With respect to partnerships that have a management committee or executive committee which has been given such responsibilities, this means only the members of those committees and, if no such committee exists, this means each of the general partners.

(i) *Material obligation* means an obligation which, if not satisfied, would cause a loss of $50,000 or more.

(j) *Organizational conflict of interest* means a situation in which:

(1) Performance of a previous contract with the RTC or the Oversight Board, by the contractor or a related entity, may provide the contractor with an unfair competitive advantage in obtaining this contract; or

(2) The contractor or any related entity has an interest or relationship which could adversely affect the contractor's ability to perform under the contract or to represent the RTC.

(k) *Pattern or practice of defalcation* means:

(1) There are two or more instances of defalcation as defined in § _____.2(c)(1) with respect to which there are continuing legal claims in an aggregate amount in excess of $50,000; or

(2) There are two or more instances of defalcation as defined in §§ _____.2(c)(2) or _____.2(c)(3).

(l) *Key employee* means an individual who participates personally and substantially, through decision, approval, disapproval, recommendation, or the rendering of advice, in the negotiation and performance of, and monitoring for compliance under the contract with the RTC.

(m) *Personal conflict of interest* means a business or financial interest of an individual, his or her spouse, minor child or other person with whom the individual has a close personal relationship, which could adversely affect the individual's ability to perform under the contract or represent the interests of the RTC;

(n) *Related entity* means a contractor's management officials; any individual or entity that controls or is controlled by or is under common control with the contractor; and any other entity that it controlled by any of a contractor's management officials and that will perform work pursuant to the contract. For purposes of this part, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, or through one or more subsidiaries, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. A subfranchiser entity shall not be regarded as related to a contractor that is its master franchiser if the subfranchiser is independently owned and operated.

(o) *RTC* means, collectively, the Corporation, the Resolution Trust Corporation as receiver, and the Resolution Trust Corporation as conservator. The "Corporation" means the Resolution Trust Corporation acting as an instrumentality of the United States, and not as conservator or receiver for an insured depository institution.

(p) *RTC employee* means a director, officer, or employee of the RTC, including a special government employee, or an employee of any other government agency who is properly acting on behalf of the RTC.

(q) Source selection information means information related to a particular contract or contractor selection process, including any such contract or process using procedures other than competitive procedures, which, if not available to the public, and, if obtained by a contractor, would give an advantage in the contract selection process.

(r) *Special government employee* means any employee serving the RTC with or without compensation for a period not to exceed 130 days during any 365-day period on a full-time or intermittent basis.

(s) *Subcontractor* means any individual or entity with whom the contractor has entered or intends to enter into a contract to perform services within the scope of this part in order to fulfill the contractor's obligation under its contract with the RTC.

(t) *Substantial loss to the Federal deposit insurance funds* means a loss of more than $50,000 to the funds maintained by a Federal deposit insurance agency for the protection of depositors.

§ _____.3 Contractors' Conflicts Committee and Outside Counsels' Conflicts Committee.

(a) *Designation.* The Board of Directors of the Corporation will designate officials of the FDIC or Corporation as members of a Contractors' Conflicts Committee, which will resolve issues of conflict of interest affecting independent contractors, other than law firms, which arise under these regulations. The Outside Counsels' Conflicts Committee appointed by the General Counsel of the FDIC, or designee, will resolve issues of conflict of interest relating to law firms.

(b) *Authority.* The Contractors' Conflicts Committee and the Outside Counsels' Conflicts Committee may delegate their authority to resolve conflicts of interest issues which arise under these regulations.

(c) *Referrals to the Board of the Corporation.* The Contractors' Conflicts Committee and the Outside Counsels' Conflicts Committee may make referrals of and recommendations to the Board of Directors of the Corporation with respect to situations in which a Committee determines that a very significant conflict of interest exists but, nevertheless, the contractor should be engaged because the contractor has special expertise not otherwise available or the engagement is otherwise in the best interests of the government.

(d) *Decisions.* Decisions issued either by the Contractors' Conflicts Committee itself, or the Board of Directors of the Corporation itself on matters referred to it by the Contractors' Conflict Committee shall be in writing and shall include statements of the bases for the decisions. Such decisions shall be filed with the Executive Secretary of the Resolution Trust Corporation and shall be made available to the public upon request, with such redactions as may be required to protect the privacy interests of identifiable individuals or confidential business information.

§ _____.4 Qualification of contractors.

(a) *Requirements.* The RTC shall not enter into a contract with any contractor unless the contractor and its related entities meet minimum standards of competence, integrity, fitness, and experience. In addition to presenting evidence (on a form or forms to be furnished by the RTC for that purpose) of competence and experience, the contractor shall provide a list of any instance during the preceding five years in which there was a default by the contractor or any of its related entities

on any material obligation to an insured depository institution, and shall be required to certify to the following items:

(1) That neither the contractor nor any of its related entities has been convicted of a felon;

(2) That neither the contractor nor any of its related entities has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any federal banking agency;

(3) That neither the contractor nor any of its related entities has demonstrated a pattern or practice of defalcation under § _____.2(k)(1);

(4) That neither the contractor nor any of its related entities has caused a substantial loss to Federal deposit insurance funds;

(5) That neither the contractor nor any of its related entities, nor any entity that during the past five years was a related entity of the contractor or those who control the contractor, has failed to satisfy an obligation to pay prinicpal or interest at its full value owed to any Federal deposit insurance funds, FSLIC, or the RTC;

(6) That neither the contractor nor any of its related entities are currently in default on any obligation(s) to the FDIC, the FSLIC, or the RTC;

(7) That neither the contractor nor any of its related entities:

(i) Is currently a party to an administrative or judicial proceeding in which any of them is alleged to have engaged in fraudulent activity or has been charged with the commission of a felony or which seeks a remedy that would prevent or materially interfere with its ability to perform on the contract; or

(ii) Is subject, to their knowledge, to an administrative or criminal investigation relating to fraudulent activity or the commission of a felony;

(8) That, during the past five years, neither the contractor nor any of its related entities has been held liable for fraud, dishonesty, misrepresentation, or breach of fiduciary duty;

(9) That neither the contractor nor any of its related entities is currently excluded from Federal procurement or nonprocurement programs;

(10) That neither the contractor nor any of its related entities is subject to an unsatisfied final judgment in favor of the FDIC, the FSLIC, or the RTC;

(11) That neither the contractor nor any of its related entities is a party to a lawsuit in which the FDIC, the FSLIC, or the RTC is seeking recovery in excess of $50,000 from the contractor or its related entities; and

(12) That the contractor will not employ any individual or subcontractor to perform work on the contract who:

(i) Has been convicted of any felony;

(ii) Has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any federal banking agency;

(iii) Has demonstrated a pattern or practice of defalcation;

(iv) Has caused a substantial loss to Federal deposit insurance funds; or

(v) Is currently in default on any obligation to the FDIC, the FSLIC, an insured depository institution or the RTC.

Depending upon the nature of the contract, a contractor may be required to submit such additional certifications or information with respect to its activities and those of its related entities as the RTC deems appropriate.

(b) *Procedures.* (1) A contractor who cannot furnish any one or more of the certifications required by paragraph (a) of this section shall provide information which fully explains the circumstances giving rise to its inability to furnish the certification(s). The Contractors' Conflicts Committee, or the Outside Counsels' Conflicts Committee, will determine whether a contractor who cannot furnish any one or more of the certifications required by paragraph (a) of this section is deemed to meet minimum standards of fitness and integrity.

(2) A contractor may consolidate the responses of its related entities in furnishing the certification required by paragraphs (a)(1) through (a)(11) of this section or in providing the information required by paragraph (b)(1) of this section. If a consolidated response is submitted, the contractor shall retain the information obtained from its related entities upon which it relied in preparing the certifications during the term of the contract and for a period of three years following the termination or expiration of the contract and shall make such information available for review by the RTC upon request.

(3) Before permitting any individual to perform work pursuant to the contract, the contractor shall obtain such information from such individual as will permit it to furnish the certification to comply with paragraph (a)(12) of this section. The contractor shall retain the information upon which it relied in preparing the certification during the term of the contract and for a period of three years following the termination or expiration of the contract and shall make such information available for review by the RTC upon request. Whenever a contractor receives information indicating that the certification or any information upon which it relied in preparing the certification is incorrect in any material respect, the contractor shall promptly notify the RTC and shall not permit the individual to whom the information relates to perform work pursuant to the contract.

(4) Before permitting any subcontractor to perform work pursuant to the contract, the contractor shall determine that the subcontractor has been determined to be qualified to perform services to the RTC.

(c) *Delay.* The RTC, in case of an emergency, to preserve assets of the RTC, any delay implementation of the certification or other requirements of this section.

(Approved by the Office of Management and Budget under control number 3205–0001)

§ 3.5 Disqualification of contractors.

(a) *Mandatory ineligibility.* A contractor shall be deemed not to meet minimum standards of fitness and integrity, and thereby ineligible to contract with the RTC, if the contractor:

(1) Is an individual and has been convicted of a felony;

(2) Has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any federal banking agency;

(3) Has demonstrated a pattern or practice of defalcation;

(4) Has caused a substantial loss to Federal deposit insurance funds; or

(5) Is currently in default on an obligation(s) to the FDIC, the FSLIC, or the RTC.

(b) *Discretionary disqualification.* The RTC may determine that a contractor, not subject to mandatory ineligibility pursuant to paragraph (a) of this section, nevertheless does not meet minimum standards of fitness and integrity to perform work for the RTC because the past activities of the contractor, or a related entity, warrant such determination.

(c) *Notification of disqualification.* The RTC shall notify the contractor in writing of its determination of mandatory or discretionary disqualification and the reason for such determination not later than 30 days after the determination is made. The RTC will institute procedures to provide appropriate review of discretionary disqualification decisions.

§ _____.6 Organizational conflicts of interest.

(a) *Information required about the contractor.* A contractor shall provide to the RTC with any bid, proposal, or offer in regard to the rendering of services to the RTC, or if no bid, proposal or offer is submitted, prior to entering into a contract with the RTC, sufficient information to permit the RTC to make a determination with regard to organizational conflicts of interest. The scope of the required information will depend on the nature of the contract and will be determined at the time of solicitation, or prior to entering into the contract. The following information shall be required about the contractor and its related entities:

(1) Relationships of the contractor and its related entities as controlling shareholder of any Federally insured depository institution or depository institution holding company;

(2) The names and addresses of contractor's related entities and a description of each related entity's business;

(3) The names of any contractor's related entities who have been or are directors or officers of an insured depository institution or depository institution holding company;

(4) A list of all competing property of the contractor and its related entities, if the contract relates to the valuation, disposition, or management of real estate;

(5) Information concerning any other business or financial interest of the contractor, or its related entities, which could adversely affect the contractors ability to perform under the contract or to represent the RTC;

(6) Any information required to comply with the requirements of § _____.4(b)(4); and

(7) Any other information about the contractor or its related entities which may be requested by the RTC.

(b) *Certification required.* At the time the contractor provides the information required by paragraph (a) of this section, the contractor shall also provide the following certification:

(1) That no organizational conflict exists as a result of the contractor's interests, relationships, or other RTC contracts;

(2) That the contractor has obtained a certification from each of its related entities that no organizational conflict exists as a result of the related entity's interests, relationships or other RTC contracts; and

(3) That, to the best of the contractor's knowledge, no organizational conflict exists as a result of its related entities' interests, relationships, or other RTC contracts; or, if organizational conflicts exist, provide information:

(i) Detailing those conflicts;

(ii) Requesting a waiver from the Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee; and

(iii) Including with the request any information it deems appropriate to support the issuance of a waiver.

(c) *Determination required.* Prior to entering into any contract, the RTC must conclude that no organizational conflict of interest exists or that, if such conflict exists, it has been waived by the Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee.

(d) *Retention of information.* Information obtained by the contractor to comply with paragraph (a) of this section and to make the certifications required by paragraph (b) of this section shall be retained during the term of the contract and for a period of three years following termination or expiration of the contract and shall be made available for review by the RTC upon request, except to the extent that disclosure is prohibited by law.

(e) *Subsequent notification.* Within 10 days after learning of an organizational conflict of interest, the contractor shall notify the RTC of the conflict of interest and either describe the steps it has taken to eliminate the conflict or request a waiver from the Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee.

(Approved by the Office of Management and Budget under control number 3205–0001)

§ _____.7 Personal conflicts of interest.

(a) *Contractor's responsibility.* A contractor shall ensure that all management officials and key employees have no personal conflicts of interest.

(b) *Information required.* A contractor shall obtain from its management officials and key employees the following information about the personal, business, and financial relationships of themselves, their spouses, and minor children;

(1) Loans from, employment by, or an ownership interest in the depository institution whose assets are the subject of the contract;

(2) Relationships within the last five years with any other insured depository institution, or depository institution holding company, as an officer, director, or controlling shareholder or employee;

(3) Financial, business, or close personal relationships with any person or entity, who to their knowledge, has an interest in the assets which are the subject of the contract, including information about negotiations or arrangements for future employment with such person or entity;

(4) A list and description of any instance during the preceding five years in which there was a default on any material obligation to an insured depository institution; and

(5) Any other information deemed necessary by the RTC.

(c) *Certification.* The contractor shall determine whether any management official or key employee has an interest which conflicts with responsibilities to the RTC. In making those determinations the contractor may rely on the information obtained pursuant to paragraph (b) of this section, unless the contractor has reason to believe that the information provided is false or inaccurate.

(d) *Disqualification.* The contractor shall disqualify persons with personal conflicts of interests from performing work pursuant to the contract. If appropriate, the contractor may seek a waiver from the Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee, to allow employment of an individual with a personal conflict of interest on the contract work. In addition, the contractor shall certify to the RTC that all management officials and key employees for whom no waiver is sought, have no business, personal, or financial interest which conflicts with responsibilities to the RTC.

(e) *Contractors' Responsibilities.* The contractor shall establish a procedure to monitor for interests which conflict with the performance of contract responsibilities. The contractor shall require management officials and key employees to provide the required information prior to employment on the contract work, and to update information within 10 days of any change.

(f) *Subsequent notification.* Within 10 days after learning of a management official's or key employee's conflict of interest, the contractor shall notify the RTC of the conflict and either describe the steps it has taken to eliminate the conflict or request a waiver from the Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee.

(g) *Retention of information.* Information obtained by a contractor from its management officials and key employment pursuant to paragraph (b) of this section shall be retained during the term of the contract and for a period of three years following termination or expiration of the contract and shall be made available for review by the RTC

upon request, except to the extent that disclosure is prohibited by law.

(Approved by the Office of Management and Budget under control number 3205-0001)

§ _____.8 General standards for independent contractor activities.

(a) In connection with the performance of any contract and during the term of such contract, a contractor, its key employees, subcontractors, and its related entities, shall not:

(1) Act for the RTC in any matter in which either the contractor, its key employees, subcontractors, or a related entity, has a conflict of interest unless the Contractors' Conflicts Committee or the Outside Counsels' Committee has determined that such participation is appropriate;

(2) Accept or solicit for itself or others favors, gifts, or other items of monetary value from any individual or entity whom the contractor, its key employee, or subcontractor, knows is seeking official action from the RTC in connection with the contract or has interests which may be substantially affected by the performance or nonperformance of duties to the RTC;

(3) Improperly use or allow the improper use of RTC property, or property over which the contractor, its key employee, subcontractor, or related entity, has supervision or control by reason of the contract, for the personal benefit of any individual or entity other than the RTC; and

(4) Make any unauthorized promise or commitment on behalf of the RTC.

(b) Any individual who acts for or on behalf of the RTC pursuant to a contract or any other agreement shall be deemed a public official for purposes of 18 U.S.C. 201. That statute generally prohibits the direct or indirect acceptance by a public official of anything of value in return for being influenced in, or because of, an official act. Violators are subject to criminal penalties.

(c) Any individual or entity providing information or certification to the RTC is subject to 18 U.S.C. 1001.[1] Upon receipt of information indicating that any individual or entity has violated any provision of title 18 of the U.S. Code or other provision of criminal law, the RTC shall refer such information to the Department of Justice.

§ _____.9 Limitations on concurrent and subsequent activities.

(a) *Avoiding undue advantage.* The Corporation has determined that contractors performing services for the RTC may have an undue advantage over competitors if they seek additional contracts with the RTC or with third parties which relate to work being performed or already performed for the RTC. To prevent such advantage, restrictions, dependent on the scope of contractual responsibilities, must be imposed on the concurrent and subsequent activities of contractors. Accordingly, the following restrictions shall apply unless waived pursuant to paragraph (b) of this section.

(1) A contractor engaged by the RTC to develop a plan of action concerning a specific insured institution cannot enter into any subsequent contract with the RTC to implement its recommendations or assist others in regard to such contract. This restriction does not bar the RTC, at its discretion, from determining to simultaneously engage a single contractor to both develop and implement a plan of action;

(2) A contractor engaged by the RTC to manage, lease, value, or establish a sales price for an asset or group of assets cannot enter into any subsequent contract with the RTC to purchase that asset or assets or assist someone other than the RTC or FDIC seeking to purchase that asset or those assets from the RTC; and

(3) A contractor cannot act for the RTC in the same particular matter in which it or a related entity has a business or financial interest.

(4) Additional limitations may be imposed on a contractor's concurrent or subsequent activities on a case-by-case basis in situations in which the RTC concludes that a contractor may gain an unfair competitive advantage or such concurrent or subsequent activity would raise a significant appearance of impropriety. These additional limitations, when imposed, will be disclosed to the contractor prior to entering into the contract.

(b) *Waivers.* The Contractors' Conflicts Committee and the Outside Counsels' Conflicts Committee may grant waivers from the limitations imposed by paragraph (a) of this section. Circumstances which may be sufficient to warrant the granting of a waiver are:

(1) Evidence of an established effective screening mechanism which would eliminate the likelihood of the contractor obtaining any undue advantage; or

(2) An open or competitive bidding procedure in which the contractor's work for the RTC would provide no competitive advantage.

§ _____.10 Communications with RTC employees.

(a) *Prohibitions.* During the course of any contractor selection process by the RTC (including any contractor selection process using procedures other than competitive procedures), aa competing contractor, its related entities, and employees, representatives, agents, or consultants of the competing contractor or its related entities shall not:

(1) Directly or indirectly make any offer or promise of future employment or business opportunity to, or engage directly or indirectly in any discussion of future employment or business opportunity with, any RTC employee with personal or direct responsibility for that procurement, and competing contractors who wish to discuss employment opportunities with an employee should inquire prior to engaging in such discussions whether the employee has personal or direct responsibility for the contractor selection process in which the contractor will be or is competing; [2]

(2) Offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any RTC employee, except as permitted by rules of the Corporation; [3] or

(3) Solicit or obtain, directly or indirectly, from any RTC employee, prior to the award of the contract, any proprietary or source selection information regarding such contractor selection process.

(b) *Competing contractor.* For purposes of this section, "competing contractor" with respect to any contractor selection process (including a process using procedures other than competitive procedures) means any entity that is, or is reasonably likely to become, a competitor for or recipient of a contract or subcontract under such contractor selection process, and includes any other person acting on behalf of such entity.

(c) *Certification.* The RTC shall not award a contract or agree to a modification of a contract unless the officer or employee of the competing contractor responsible for the bid, offer, or proposal submits with it a written certification that:

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[1] Section 1001 of title 18 generally prohibits the making of any false or fraudulent statement to a federal officer.

[2] Employees who have no personal or direct responsibility for the selection of a contractor may engage in employment discussions if they disqualify themselves from subsequent participation in any matter in which the contractor has an interest. *See* 18 U.S.C. 208(a) and 12 C.F.R. 1605.15(b)

[3] Employees of the RTC are prohibited from soliciting or accepting anything of value from anyone having business with the RTC or the FDIC. *See* 12 C.F.R. 1605.8.

(1) The officer or employee is aware of the prohibitions of paragraph (a) of this section and, to the best of that officer's or employee's knowledge and belief, he or she has no information concerning a violation or possible violation of paragraph (a) of this section; and

(2) Each officer, employee, agent, representative, and consultant of such competing contractor who participated personally and substantially in the preparation and submission of such bid, offer, proposal, or modification of such contract has certified to the responsible officer or employee that he or she:

(i) Is familiar with and will comply with the requirements of paragraph (a) of this section; and

(ii) Has no information of any violations or possible violations of paragraph (a) of this section and will report immediately to the officer or employee of the competing contractor responsible for the bid, offer, or proposal for any contract or modification of such contract any subsequently gained information concerning a violation or possible violation of paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 3205–0001)

§ _____.11 Confidentiality of information.

(a) *Nonpublic information defined.* Any information identified by the RTC as confidential or provided by the RTC to its attorneys in an attorney-client relationship, shall be deemed to be nonpublic until the RTC determines otherwise, in writing, or the information becomes part of the body of public information from a source other than the contractor.

(b) *Prohibitions.* The contractor and its related entities are prohibited from:

(1) Disclosing nonpublic information to anyone except as required to perform the contractor's obligations pursuant to the contract; and

(2) Using or allowing the use of any nonpublic information to further any private interest other than as contemplated by the contract.

(c) *Contractor's responsibility.* The contractor is required to take appropriate measures to ensure the confidentiality of nonpublic information and to prevent its inappropriate use. Such measures may include:

(1) Notifying all employees, related entities, subcontractors, and other persons to whom the contractor may need to disclose nonpublic information to perform its responsibilities under the contract of the requirement of confidentiality and limitations as to the use of nonpublic information; and

(2) Requiring each person to whom nonpublic information is provided to execute a certification that such person understands the limitations on disclosure and use and will maintain the confidentiality of the information and not use it other than as contemplated by the contract.

(d) The Corporation shall establish a recordkeeping system, which shall serve the purposes of the RTC with respect to the Privacy Act and the Freedom of Information Act. Materials designated by the RTC shall be eligible for protection under applicable law.

§ _____.12 Source selection information.

(a) *Prohibition.* During the conduct of any contractor selection process by the RTC, no person who is given authorized or obtains unauthorized access to source selection information regarding the contractor selection process shall knowingly disclose such information, directly or indirectly, to any person other than a person authorized to receive such information by the Executive Director of the Resolution Trust Corporation or his or her designee, the General Counsel of the FDIC or his or her designee, or the RTC's contracting officer.

(b) *Permitted disclosures.* The Executive Director of the Resolution Trust Corporation or his or her designee, the General Counsel of the FDIC or his or her designee, or the RTC's contracting officer, in accordance with internal procedures developed by the Corporation, may authorize persons or classes of persons to obtain access to proprietary or source selection information when access is essential to the contractor selection process.

§ _____.13 Use of consultants.

(a) *Contingent fees.* Contractors are prohibited from obtaining the services of a consultant or advisor to assist in obtaining a contract with the RTC pursuant to an agreement in which payment of the consultant or advisor would be contingent on the contractor obtaining the contract.

(b) *Disclosure.* When submitting any bid, offer, or proposal to the RTC, a contractor shall include information about payments, agreements to pay or arrangements for obtaining the services (other than engineering, technical, legal, and accounting services) of consultants or advisors to assist in obtaining the contract that were made by the contractor or a related entity.

§ _____.14 Use of information.

The RTC may utilize any information from any source, including information obtained under this part, in the contractor selection process.

§ _____.15 Rescission of contracts.

(a) *Circumstances permitting rescission.* The RTC may rescind any contract in its entirety or with respect to a particular assignment if:

(1) There is a failure to disclose a material fact to the RTC;

(2) The contractor would be prohibited from contracting with the RTC by § _____.5(a);

(3) Any person or related entity has been subject to a final enforcement action by any federal bank regulatory agency;

(4) There is any material change in the representations or certifications provided to the RTC under § _____.4;

(5) There arises a personal or organizational conflict of interest not waived by the Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee; or

(6) There is violation of any provision of these regulations.

(b) *Contractor liability.* In those situations in which the RTC determines to rescind a contract, the RTC may seek damages from the contractor or subcontractor whose actions were the basis for the rescission. Moreover, the RTC may pursue any rights and remedies provided by law whether or not it determines to rescind the contract.

(c) *Permanent bar.* Contractors whose contracts with the RTC have been rescinded pursuant to paragpraph (a) of this section shall be deemed ineligible to enter into further contracts with the RTC. This ineligibility shall apply to related entities of the contractor, unless determined otherwise by the Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee. The Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee may determine if and when a contractor's or its related entity's ineligibility under his paragraph may be lifted, and what, if any, conditions may apply to the lifting of the ineligibility.

(d) *Written submission.* In the case of a rescission or bar that is based upon the ineligibility of the contractor under § _____.5 (a)(1) through (a)(4) or, if upon another ground, the integrity of a contractor is called in question, the contractor may provide a written submission to the person or entity authorized to act for the RTC that has taken action to rescind a contract or bar a contractor. Such written submission shall receive prompt consideration, and the contractor shall be informed

whether or not the RTC's decision or action will be reconsidered.

§ _____.16 Resolution Trust Corporation as conservator.

(a) Contractors of an association for which the Resolution Trust Corporation is conservator that are in effect as of the effective date of this regulation or the appointment of the conservator shall not be subject to the requirements of this Part. Except as provided in paragraph (b) of this section, any such contract that may be terminated under its terms without penalty shall be terminated no later than the later of six months from the effective date of this regulation or the appointment of the conservator, and no such contract may be renewed, unless such contract is in or brought into compliance with this Part.

(b) During the period that terminates on the later of the date six months from the effective date of this regulation or the date six months from the appointment of the Resolution Trust Corporation as conservator, the conservator may enter into or renew a contract that does not comply with the requirements of this Part, or fail to terminate a terminable contract in accordance with paragraph (a) of this section, *provided* that the conservator determines with respect to any such contract that:

(1) It is necessary for the operations of the association; and

(2) No qualified contractor is available to contract for similar services on reasonable financial terms.

The conservator shall not authorize or permit the term of any such contract to extend beyond the close of that period during which the contractor will be necessary for the operations of the association and a qualified contract for similar services on reasonable financial terms is not available, as determined by the conservator.

(c) The Corporation shall establish a reporting system for the contracts described in this section that are not in compliance with the requirements of this Part. Reports shall be forwarded to the Board of Directors of the Corporation and the Oversight Board.

Adoption of the Final Common Rule

The agency specific adoption of the final common rule, which appears at the end of the common preamble, appears below:

OVERSIGHT BOARD

12 CFR Part 1506

List of Subjects in 12 CFR Part 1506

Conflict of interests, Government contracts.

Chapter XV of title 12 of the Code of Federal Regulations is amended as set forth below.

Adopted by the Oversight Board the 5th day of February, 1990.

Daniel P. Kearney,

President and Chief Executive Officer, Oversight Board.

1. Subchapter A is added to chapter XV. The subchapter heading reads as follows:

SUBCHAPTER A—GENERAL PROVISIONS

2. Part 1506 is added to subchapter A to read as set forth at the end of the common preamble.

PART 1506—QUALIFICATION OF, ETHICAL STANDARDS OF CONDUCT FOR, AND RESTRICTIONS ON THE USE OF CONFIDENTIAL INFORMATION BY INDEPENDENT CONTRACTORS

Sec.

Authority: 12 U.S.C. 1441a(a)(13) and (p)(1)(B) (3), (6), and (7).

RESOLUTION TRUST CORPORATION

12 CFR Part 1606

List of Subjects in 12 CFR Part 1606

Conflicts of interests, Government contracts.

Title 12 of the Code of Federal Regulations is amended as set forth below:

By order of the Board of Directors.

Dated at Washington, DC, this 5th day of February, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

1. Chapter XVI is established in 12 CFR. The chapter heading reads as follows:

CHAPTER XVI—RESOLUTION TRUST CORPORATION

2. Part 1606 is added to read as set forth at the end of the common preamble.

PART 1606—QUALIFICATION OF, ETHICAL STANDARDS OF CONDUCT FOR, AND RESTRICTIONS ON THE USE OF CONFIDENTIAL INFORMATION BY INDEPENDENT CONTRACTORS

Sec.

Authority: 12 U.S.C. 1441a(b)(4) and (12), (p)(1)(B), (3), and (7), and 12 U.S.C. 1821(d).

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Part V

Oversight Board

12 CFR Part 1505

Employee Responsibilities and Conduct; Interim Rule

OVERSIGHT BOARD

12 CFR Part 1505

Employee Responsibilities and Conduct

AGENCY: Oversight Board.

ACTION: Interim rule.

SUMMARY: This interim rule establishes standards for the responsibilities and ethical conduct of the Oversight Board's members, officers and employees, including special government employees. It is issued to implement section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law 101–73. This rule will insure that the highest ethical and other standards of conduct are maintained by all Oversight Board employees.

The Oversight Board adopted this interim rule on February 5, 1990, the statutory deadline set forth in FIRREA. Proposed regulations on ethical and other standards of conduct were issued by the Board for public comment on January 9, 1990 (55 FR 821). This rule is adopted at this time because the public comment period on the proposed regulations expires February 8, 1990.

EFFECTIVE DATE: This rule is effective February 5, 1990.

FOR FURTHER INFORMATION CONTACT: Lawrence Hayes, Office of General Counsel, Oversight Board (202) 376–5490, 1825 Connecticut Avenue, NW., Washington, DC 20232.

SUPPLEMENTARY INFORMATION: The Oversight Board ("Board") was established as an instrumentality of the United States by section 501(a) of FIRREA, Pub. L. 101–73, August 9, 1989, by adding a new section 21A to the Federal Home Loan Bank Act, 12 U.S.C. 1421 *et seq.* Section 21A(p)(2) of the Federal Home Loan Bank Act requires the Oversight Board to promulgate rules and regulations within 180 days governing conflicts of interest, ethical responsibilities, and post-employment restrictions applicable to members, officers, and employees of the Board that shall be no less stringent than those applicable to the Federal Deposit Insurance Corporation. Since the same statutory requirements apply to the Resolution Trust Corporation, an inter-agency task force was appointed to develop regulations for both the Board and the RTC.

To implement the statutory requirements, the Board has published for public comment a proposed rule governing its employee's responsibilities and conduct. Also, as required by Executive Order 12674 of April 12, 1989, the board submitted the proposed rule to the Office of Government Ethics (OGE) for review and approval.

Although the comment period will not expire until February 8, 1990, in order to meet the 180-day statutory deadline, the Board is issuing its standards of conduct regulations as an interim rule to be effective as of February 5, 1990, the date set by FIRREA. This interim rule reflects the two changes required by the Office of Government Ethics as a condition for its approval of the rule and some of its recommended clarifications. Also, while the Board has received no public comments on the proposed rule, the drafters of this interim rule considered the public comments submitted to the RTC concerning its proposed employee conduct rule, which in many respects is the same as the rule proposed by the Board. While this interim rule is effective immediately, prior to issuing its final rule, the Board will consider all public comments it may receive on or before February 8, 1990.

As noted above, this interim rule reflects the changes mandated by OGE. Specifically, the rule now reflects in § 1505.11(b) that Oversight Board employees may not use their official titles in connection with a private undertaking, such as writing or lecturing, except in biographical sketches. Second, § 1505.11(d) has been added to reflect the prohibition contained in section 102 of Executive Order 12674 against full-time Presidential appointees in non-career positions receiving any earned income for any outside employment or activity.

In addition, the interim rule has been revised to reflect the comments received by the RTC concerning those provisions of its proposed rule that are identical or substantially the same as the Board's. Thus, in response to comments received from a trade association concerning the rules applicable to advisory Board members, section 1532(d) of the interim rule has been revised to bar only representational activities by such special government employees rather than participation in a contract their employers may have with the RTC or Oversight Board, provided they are fully recused from participating in the same matter in their official capacity. However, a provision has been added to ban the Advisory Board members from sharing in profits directly attributable to the business relationship of his or her employer and the RTC.

The interim rule has been further revised in several respects that primarily represent clarifications. The interim rule makes it clear that the general restrictions on the extensions of credit apply only to "covered" employees, rather than all Board employees. In addition, the definitions in Subpart G concerning the minimum standards of fitness prescribed for RTC employees are revised by deleting definitions and substituting cross-references to the joint independent contractor regulations to be published in 12 CFR part 1506.

Because this Rule relates to agency personnel and management, the notice and public procedure requirements of 5 U.S.C. 553(b) and the delayed effective date requirements of 5 U.S.C. 553(d) are inapplicable pursuant to 5 U.S.C. 553(a)(2), and the provisions of Executive Order 12291 do not apply. Because no notice of proposed rule making is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects 12 CFR 1505

Conflict of interests, Government contracts.

For the reasons set forth in the preamble, Chapter XV of Title 12 of the Code of Federal Regulations is amended by adding new Part 1505 to Subchapter A to read as follows:

PART 1505—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—General Provisions

Sec.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

Subpart C—Financial Interests and Obligations; Outside Employment

Authority: 12 U.S.C. 1441a(a)(13) and (p)(2); 5 CFR part 735.

Subpart A—General Provisions

§ 1505.1 Purpose and scope.

(a) This part establishes the standards of responsibility and conduct for all employees of the Oversight Board.

(b) The following subject areas are covered:

(1) Subpart A of this part provides the definitions to be applied in implementing these standards and sets forth general procedures on employee responsibilities, counseling, distribution of the regulation, sanctions, and remedial actions;

(2) Subpart B of this part sets forth basic conflict of interest rules on receiving gifts, entertainment, favors, loans, and travel expenses and rules of conduct on speaking, publications, employment of relatives, use of Board and RTC property, and indebtedness and gambling applicable to all employees;

(3) Subpart C of this part contains rules on credit, investments, purchase of Oversight Board and Resolution Trust Corporation property and assets in conservatorship or receivership, outside employment, and employment of family members applicable to all employees;

(4) Subpart D of this part requires reports of financial interests and employment;

(5) Subpart E of this part sets forth rules on representing others before the Oversight Board and Resolution Trust Corporation;

(6) Subpart F of this part prescribes rules for special government employees; and

(7) Subpart G of this part requires the Resolution Trust Corporation to prescribe policies and procedures setting forth minimum standards of competency, experience, integrity, and fitness for its employees.

§ 1505.2 Definitions.

For the purposes of this part:

(a) "*Affiliate*" means any depository institution holding company, of which an insured bank or insured savings association is a subsidiary and any other subsidiary of such depository institution holding company. Any entity which is a subsidiary of an insured bank or insured savings association shall be deemed to be an affiliate of that insured bank or insured savings association.

(b) "*Appearance*" means an individual's physical presence before the United States, including the Board or RTC, in any formal or informal setting or conveyance of material to the United States in connection with a formal proceeding or application. A communication is broader than an appearance and includes, for example, correspondence or telephone calls.

(c) "*Assisted entity*" means (1) any insured depository institution which has received financial assistance from the RTC to prevent its failure, (2) any insured depository institution resulting from a merger or consolidation with any insured depository institution described in paragraph (k) of this section, or (3) any parent depository institution holding company of an insured depository institution described in paragraph (k) of this section; *Provided*, That an ongoing financial relationship, including, but not limited to, the repayment of a loan, the servicing of assets, or the existence of stock or warrants, exists between such insured depository institution or insured depository institution holding company and the RTC.

(d) "*Assuming entity*" means any insured depository institution or insured depository institution holding company which has entered into a transaction with the RTC to purchase some or all of the assets and assume some or all of the liabilities of a failed insured depository institution for a period of one year following the closing of such failed insured depository institution.

(e) "*Board*" means the Oversight Board.

(f) "*Chairperson*" means the Chairperson of the Board.

(g) "*Covered employee*" means any entity or employee required to file a confidential statement of employment and financial interests pursuant to § 1505.24(a) or a public Financial Disclosure Report (SF 278) pursuant to § 1505.25.

(h) "*Dependent child*" means a son, daughter, stepson, or stepdaughter who either:

(1) Is unmarried, under 21, and living in the employee's household; or

(2) Has received over half of his or her support from the employee in the preceding calendar year.

(i) "*Employee*" means any member, officer, employee of the Board, including any personnel detailed from any executive department or agency, or individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Oversight Board or RTC, under the direct supervision of an officer or employee of the Board or RTC. The term does not include special government employees or independent contractors retained by the RTC whose conduct is regulated under 12 CFR part 1506.

(j) "*Independent contractor*" means the individual or entity whose work product is supervised by the Oversight or RTC, but whose employees do not perform functions or activities of the Board or RTC, under the direct supervision of board or RTC employees.

(k) "*Insured depository institution*" means any bank or savings association the deposits of which are insured by a federal deposit insurance fund administered by the FDIC.

(l) "*FIRREA*" means the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101–73 of August 9, 1989 (103 Stat. 183).

(m) "*Member of the employee's immediate household*" means a person who is related to the employee by blood, marriage, or adoption and who resides in the same household as the employee.

(n) "*Person*" means an individual, insured depository institution, corporation, company, association,

partnership, firm, society, or any other organization or institution.

(o) "*President*" means the President and Chief Executive Officer of the Board or his or her delegate.

(p) "*RTC*" means the Resolution Trust Corporation.

(q) "*Security*" means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement, pre-organization certificate or subscription, investment contract, voting trust certificate, or, in general, any interest or instrument commonly known as a security, but does not include a deposit.

(r) "*Senior employee*" means any member or other officer or employee of the Oversight Board named in or designated by the Director of the Office of Government Ethics pursuant to 18 U.S.C. 207(d).

(s) "*Special government employee*" means any employee performing temporary duties either on a full time or intermittent basis, with or without compensation, for a period estimated not to exceed 130 days during any period of 365 consecutive days. Independent members of the Oversight Board and members of the National and Regional Advisory Boards who perform duties on this basis will be special government employees.

(t) "*Subsidiary*" means a company the voting stock of which is 50 percent or more owned or controlled by another company.

§ 1505.3 Designated agency ethics official and alternate.

(a) The Board's ethics program shall be coordinated and managed by the Designated Agency Ethics Official (hereinafter referred to as the DAEO) who will be appointed by the Oversight Board.

(b) An Alternate Designated Agency Ethics Official (hereinafter referred to as the Alternate DAEO) will also be appointed by the Board, to act for the DAEO when he or she is unavailable. When acting for the DAEO, the Alternate DAEO may perform all of the duties and functions of the DAEO. All references in these regulations to the DAEO shall mean the Alternate DAEO whenever he or she is acting for the DAEO.

§ 1505.4 Employee responsibility, counseling, and distribution of regulation.

(a) Each employee is responsible for being familiar with and complying with the provisions of this part. The DAEO shall be available for counseling and guidance as to the statutes and regulations affecting employee responsibility and conduct, including interpretation of this part.

(b) The DAEO shall assure that a copy of this part is provided to each new Board employee within 30 days of commencement of employment and each such employee shall complete and file a certification acknowledging receipt of the regulations. The DAEO shall annually distribute a reminder of the basic provisions of this part to each employee.

(c) An employee who believes that any assignment to a matter may result in a conflict of interest or the appearance of a conflict of interest shall report immediately all relevant facts to his or her immediate supervisor.

§ 1505.5 Sanctions and remedial actions.

(a) Any violation of this part by an employee, or special government employee, may be cause for disciplinary or remedial action, which may be in addition to any penalty prescribed by law.

(b) Disciplinary action may include, but is not limited to, an oral or written warning or admonishment, reprimand, suspension, or removal from office.

(c) Remedial action may include divestment of conflicting interests, change in assigned duties, or disqualification from a particular assignment or a particular matter.

(d) Unless there is a request for review, pursuant to § 1505.6, of an order of remedial action, such order of remedial action, other than disqualification, shall take effect 20 days after receipt of notice thereof, and disqualification shall take effect immediately. Any order of remedial action reviewed and approved pursuant to § 1505.6 shall take effect immediately upon receipt of notice of the determination of the President.

§ 1505.6 Review of remedial actions.

When remedial action is ordered pursuant to § 1505.5, the affected Board employee, or special government employee, may request the President to review such order. Any request for review shall be made in writing, within 20 days of receipt of notice of the order, and shall contain a statement of reasons for such request. The President will promptly review the matter and provide a written determination which shall be final.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 1505.7 General rules.

Employees are expected to maintain high standards of honesty, integrity, impartiality, and conduct and to avoid misconduct and conflicts of interest, or the appearance of conflicts of interest. No employee shall engage in any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding the Board's or RTC's efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Board decision outside official channels; or

(f) Adversely affecting the public's confidence in the integrity of the Board or RTC.

§ 1505.8 Gifts, entertainment, favors, and loans.

(a) Except as provided in paragraph (b) of this section, no employee may solicit or accept, for himself or herself or for another person, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or other thing of monetary value from a person who:

(1) Has or seeks contractual or other business or financial relationships with the Board or RTC;

(2) Is supervised or regulated by any federal financial regulatory agency; [1]

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; or

(4) Is an officer, director, or employee of any insured depository institution or trade organization comprised of members who seek to do business with the Board or RTC.

(b) The prohibition of paragraph (a) of this section do not apply:

(1) To the solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative where it is clear from the circumstances that personal or family relationship rather than the business of the persons concerned are the motivating factors;

(2) To the acceptance of unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, and other items of nominal value;

(3) Except as otherwise provided in § 1505.16, to the acceptance of loans from insured depository institutions or other financial institutions on the

[1] A professional, trade, or business association, a substantial majority of whose members are regulated by or do or seek to do business with the Board or RTC or any federal financial regulatory agency, is itself a prohibited source for purposes of this section. (Memorandum 87 x 13, OGE, issued 1987)

customary terms and conditions offered to the general public;

(4) To the acceptance of food, refreshments, and accompanying entertainment of nominal value on infrequent occasions in the ordinary course of a conference, meeting, or other function at which an employee is properly in attendance in his or her official capacity; and

(5) To the acceptance of food, refreshments, and accompanying entertainment of nominal value offered in the course of a group function or widely attended gathering at which the attendance of the employee is in the interest of the Board.

(c) Whenever an employee receives a gift or other item of monetary value the acceptance of which is prohibited by paragraph (a) of this section, or whenever a gift or other item of monetary value is received from a source other than a source described in paragraph (a) of this section and is given because of the employee's official position or in conjunction with official duties carried out by the employee, the employee shall notify the DAEO within ten days of receipt of such gift or item. The gift or item shall be promptly returned to the sender or otherwise disposed of as directed by the DAEO. The cost of returning such gift or item shall be borne by the Board.

(d) An employee may not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay then himself or herself, unless it is a voluntary gift or donation of nominal value made on a special occasion such as marriage, illness, or retirement.

(e) An employee may not request or accept a gift, present, or decoration from a foreign government, except as permitted by law.

(f) Procurement officials shall not, during the conduct of a procurement of goods or services under the Federal Procurement laws and regulations, knowingly solicit or accept any money, gratuity, or other thing of value from any officer, employee, representative, agent, or consultant of any competing contractor for such procurement.

§ 1505.9 Travel expenses.

(a) Expenses of travel, lodging, and subsistence incurred by an employee while on official duty shall be paid for or reimbursed by the Board and an employee shall not accept payment or reimbursement for such expenses from any private source except as provided in this § 1505.9(d).

(b) On rare occasions where there is no practical alternative to acceptance, an employee may accept travel, lodging, or subsistence from a private source while on official duty. The employee must report the acceptance, value, and circumstances thereof to his or her immediate supervisor and the DAEO within 30 days of such acceptance. When appropriate, the Board will reimburse the private source for the fair market value of such travel, lodging, or subsistence.

(c) For the purpose of this section, "subsistence" does not include food or refreshments accepted on infrequent occasions in the ordinary course of an official function or a widely attended gathering as permitted by § 1505.8 (b)(4) and (b)(5).

(d) Under the provisions of 5 U.S.C. 4111, an employee may accept reimbursement for travel, lodging, or subsistence expenses from an organization which is exempt from taxation under 26 U.S.C. 501(c)(3), if no U.S. Government payment or reimbursement is made for the expense, and acceptance does not result in, or create the appearance of, a conflict of interest; and in the case of employees who are permanent employees of any executive department or agency, being utilized by the Board on a reimbursable basis, where acceptance would be consistent with the other federal agency's travel policies and regulations.

§ 1505.10 Use of official information.

(a) Except as permitted in § 1505.11, an employee may not, directly or indirectly, use or allow the use of information which is obtained as a result of his or her Board employment but which is not available to the general public in order to engage in any financial transaction or to further a private interest.

(b) An employee may not maintain, disclose, or otherwise use information in a manner which violates the Privacy Act of 1974, 5 U.S.C. 552a.

(c) An employee may not disclose confidential business information obtained in the course of his or her employment or official duties except as authorized by law. (See 18 U.S.C. 1905.)

§ 1505.11 Lectures, speeches, and manuscripts.

(a) No employee shall publish any material or speak before insured depository institutions or public organizations on matters involving the Board or RTC unless the employee receives prior approval, and prior clearance of material to be published, by the President.

(b) An employee shall not use his or her official title without specific written approval of the President. An example of title use where approval is normally appropriate is where the employee's Government position is referred to in biographical information provided in conjunction with lectures, speeches, and manuscripts.

(c) An employee shall not use in any teaching, lecturing, speaking, or writing engagement information obtained as a result of his or her Board employment unless the information is available to the general public or the President gives authorization for such use, upon the determination that the use of the information is in the public interest.

(d) No employee may receive any compensation, honorarium, or other thing of monetary value for any speech, lecture, publication, or similar engagement, the subject matter of which relates specifically to matters involving the Board or RTC or contains information that is not otherwise available to the general public. No employee may accept an honorarium of more than $2,000 for any appearance, speech, or article in connection with non-board related activities. (See 2 U.S.C. 441i.) Employees appointed by the President to full-time noncareer positions are prohibited from receiving any earned income from any outside employment or activity. (See Executive Order 12674 of April 12, 1989.)

§ 1505.12 Employment of relatives.

(a) For the purposes of this section:

(1) A *"relative"* is any person related to an Oversight Board official, an RTC official, or a special Government employee of the Board or RTC as parent, stepparent, child, stepchild, brother, sister, stepbrother, stepsister, half-brother, half-sister, spouse, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.

(2) An *"official"* is any employee who has authority to appoint, employ, promote, or advance employees or who recommends anyone for appointment, employment, promotion, or advancement at the Oversight Board or the RTC.

(3) A *"supervisor"* is any employee whose position requires independent judgment to appoint, employ, promote, advance, assign, direct, reward, transfer, suspend, discipline remove, adjust grievances, or furlough any person or to recommend any such action.

(b) A Board official may not:

(1) Appoint, employ, promote, or advance any relative to a position at the Oversight Board or the RTC;

(2) Advocate a relative's appointment, employment, promotion, or advancement at the Oversight Board or RTC; or

(3) Appoint, employ, promote, or advance a relative of another Oversight Board or RTC official if such other official has advocated the relative's appointment, employment, promotion, or advancement.

(c)(1) No employee may be a supervisor of any relative.

(2) Whenever any employee becomes a supervisor of a relative, the employee shall report in writing that fact to his or her supervisor. The appropriate management official, in consultation with the DAEO, shall determine whether the relative's position may be removed from the scope of the supervisor's authority, taking into consideration the nature of the supervisor's position, the operational needs of the work unit, and the potential for conflicts of interest or the appearance thereof. If it is determined that it is not feasible to remove the relative's position from the scope of the supervisor's authority, the appropriate management officials shall determine whether the relative may be assigned to another position at the Board which is outside the scope of the supervisor's authority.

§ 1505.13 Use of property and resources owned or controlled by the Board or RTC.

An employee shall not, directly or indirectly, use or allow the use of any property or resources, owned or controlled by the Board or RTC for other than officially approved activities. An employee has a duty to protect and conserve property, including equipment, supplies, and other property entrusted or issued to the employee.

§ 1505.14 Indebtedness, gambling, and other conduct.

(a) *Indebtedness.* An employee is expected to meet all just financial obligations, whether imposed by law or contract. For the purpose of this section, a "just financial obligation" is one acknowledged by the employee or reduced to judgement by a court or one imposed by law such as federal, state, or local taxes.

(b) *Gambling.* An employee shall not participate in any gambling activity, including use of gambling devices, lotteries, pools, games for money or property, or numbers tickets, while on property owned or leased by the Board or the government, or while on duty for the Board.

(c) *Crimes and dishonesty.* An employee shall not engage in criminal or dishonest, or any other conduct prejudicial to the Board. Any employee who has information indicating that another employee engaged in any criminal conduct or violated any of the rules of these Standards of Conduct shall promptly convey such information to the DAEO.

(d) *Discrimination.* An employee shall not discriminate against any other employee, or applicant for employment, nor exclude any person from participating in, or deny to any person the benefits of, any program or activity administered by the Board or RTC on the basis of race, color, religion, national origin, sex, age or handicap.

(e) *Political activity.* Employees have the right to vote as they may choose and to express their opinions on all political subjects and candidates, but are forbidden to take active part in political management or campaigns except as permitted by law. Prohibitions concerning political activities may be found in 5 U.S.C. 7321 *et seq.* (the Hatch Act) and 18 U.S.C. 602, 603, and 607.

(f) *Miscellaneous.* Other provisions with which an employee should be familiar include:

(1) The "Code of Ethics for Government Service," which prescribes general standards of conduct (Pub. L. No. 96-303, 94 Stat. 855-856);

(2) Prohibitions relating to bribery, conflicts of interest, and graft (18 U.S.C. 201-209);

(3) Prohibitions against disloyalty and striking (5 U.S.C. 7311, (18 U.S.C. 1918);

(4) Prohibitions against the disclosure of classified information (18 U.S.C. 798);

(5) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352);

(6) Prohibitions against the misuse of a government vehicle (31 U.S.C. 1349(b));

(7) Prohibition against the misuse of the franking privilege (*i.e.*, prepaid postage) (18 U.S.C. 1719);

(8) Prohibition against the use of deceit in an examination or personnel action in connection with government employment (18 U.S.C. 1917);

(9) Prohibition against fraud or false statements in a government matter (18 U.S.C. 1001);

(10) Prohibition against mutilating or destroying a public record (18 U.S.C. 2071);

(11) Prohibitions against embezzlement of government money or property (18 U.S.C. 641); failing to account for public money (18 U.S.C. 643); and embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654);

(12) Prohibition against unauthorized use of documents relating to claims from or by the government (18 U.S.C. 285); and

(13) Prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

Subpart C—Financial Interests and Obligations; Outside Employment

§ 1505.15 General rules.

(a) No employee shall have any direct or indirect financial interest or obligation that conflicts or appears to conflict with the employee's duties and responsibilities.

(b) No employee may negotiate or have any arrangement concerning prospective employment with a person whose financial interests may be directly and substantially affected by the employee's performance of his or her Board duties and responsibilities while the employee is personally and substantially engaged, as part of his or her official duties, in any matter affecting that person. (See 18 U.S.C. 208.)

(c) No employee may participate personally and substantially, by decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other action, in any matter in which the employee, the employee's spouse, minor child, partner, or organization in which the employee serves as an officer, director, trustee, partner, or employee, has a financial interest (other than a deposit in an insured depository institution). (See 18 U.S.C. 208.)

(d) No partner of an employee or a special government employee may act as agent or attorney for any person other than the United States before the Board or RTC in a matter in which the employee participates or has participated, personally and substantially, by decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise or which is the subject of the employee's official responsibility. (See 18 U.S.C. 207.)

(e) An employee shall disqualify himself or herself from participation in any matter in which he or she has a financial interest by notifying his or her supervisor and the DAEO in writing of such matter and financial interest.

(f) The prohibitions of paragraphs (a), (b), (c), and (e) of this section shall not apply if the employee receives the prior written determination by the President, after consultation with the DAEO and the Office of Government Ethics, that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Board. (See 18 U.S.C. 208(b)(1).)

§ 1505.16 Extensions of credit.

Unless the credit is extended through the use of a credit card under the same terms and conditions as are offered to the general public and the total line of credit from any one institution does not exceed $10,000:

(a) Covered employees may not knowingly, directly or indirectly, accept or become obligated on any extension of credit from any institution which the RTC manages as conservator or an assisted or assuming entity, for as long as the institution remains in conservatorship or one year following the end of the RTC's involvement with the assisted or assuming entity. Such an institution will hereafter be referred to as a "prohibited creditor". The DAEO for the Oversight Board will maintain a list of "prohibited creditors" for review by Oversight Board employees. An employee's knowledge that he was accepting or becoming obligated on an extension of credit from such an institution can be presumed if the institution was on the list of prohibited institutions and the employee had a reasonable opportunity to review the list prior to accepting or becoming obligated on an extension of credit from such an institution.

(b) If the adoption of this regulation, change in marital status, commencement of employment, or an action affecting the status of the creditor [2] results in an extension of credit prohibited by paragraph (a) of this section, such extension of credit may be retained by the covered employee if it is liquidated under its original terms, without renegotiation. If an otherwise prohibited extension of credit is retained in accordance with this paragraph, the employee shall be disqualified from participating in any particular matter having a direct and predictable impact on the creditor: *Provided,* That the President, after consultation with the DAEO and the Office of Government Ethics, may determine that the obligation will not affect the integrity of the employee's services to the Board.

(c) A covered employee otherwise required to liquidate a non-conforming extension of credit under its original terms may request permission to renegotiate the loan. Any such request shall be made, in writing, to the President, with a copy provided to the DAEO, stating:

(1) The purpose of the renegotiation;

(2) The terms and conditions of the original loan;

(3) The terms and conditions now available to the general public;

(4) The terms and conditions now offered the employee;

(5) What action the employee has taken to move the loan to an otherwise nonprohibited creditor; and

(6) The financial hardship, if any, denial of the request will cause.

(d) No covered employee may renegotiate a loan from a prohibited creditor without the prior written approval of the President, after consultation with the DAEO.

(e) Notwithstanding the restrictions of this section, a covered employee may assume a mortgage loan made by a prohibited creditor under the following circumstances:

(1) The loan is for employee's personal residence;

(2) The employee is unable to arrange, without undue financial hardship, a loan from a nonprohibited creditor;

(3) The terms of the assumption are no more favorable than those made available to the general public by the same creditor;

(4) The employee receives the prior approval of the appropriate approving official, who shall have consulted with the DAEO; and

(5) The employee is disqualified from participating in any particular matter having a direct and predictable impact on the creditor.

(f) An extension of credit to a covered employee's spouse or dependent child shall constitute an extension of credit to the employee.

§ 1505.17 Securities of insured depository institutions.

(a) While employed by the Board an employee may not purchase, own, or control, directly or indirectly, any securities of an insured depository institution or affiliate thereof, except as permitted in this section.

(b)(1) Except as provided in paragraph (b)(2) of this section, an employee may own or control securities of an insured depository institution, or affiliate thereof, whenever:

(i) Ownership or control was acquired prior to commencement of Board employment, or after commencement of employment, through a change in marital status or through circumstances beyond the employee's control, such as inheritance, gift, or merger, acquisition or other change in corporate ownership;

(ii) The employee makes full, written disclosure on the prescribed form to the President and DAEO, within 30 days of commencing employment or acquiring the interest; and

(iii) The employee is disqualified from participating in any particular matter having a direct and predictable impact on the insured depository institution or affiliate: *Provided,* That the President, after consultation with the DAEO and the Office of Government Ethics, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the Board.

An employee may own or control additional securities which result from a stock split, stock dividend, or the exercise of options or preemptive rights arising out of the ownership of such securities.

(2) The President, after consultation with the DAEO, may require that an employee divest his or her interest in securities whenever disqualification under paragraph (b)(1) of this section might impair the employee's ability to perform his or her Board duties and responsibilities.

(c) An employee may have an indirect interest in securities of an insured depository institution, or affiliate thereof which arises through ownership of shares (or other investment units) of publicly held holding companies, mutual funds, or investment trusts but only if:

(1) The assets of the holding company, mutual fund, or investment trust consist primarily of securities of nonbank entities; and

(2) The employee does not own or control 5 percent or more of the shares (or other investment units) of the holding company, mutual fund, or investment trust.

Such an indirect interest in securities of an insured bank or affiliate is deemed too inconsequential to affect the integrity of the employee's services to the Board. (This provision, which represents a statutory waiver pursuant to former 18 U.S.C. 208(b)(2), is adopted from the FDIC regulations at 12 CFR 336.1–7(c).)

§ 1505.18 Other investments.

(a) While employed by the Board an employee may not purchase, own, or control, directly or indirectly, any securities issued by any bridge bank or other institution organized under section 21A(b)(11) of the Federal Home Loan Bank Board Act as added by section 501(a) of FIRREA.

(b) While employed by the Board an employee may not purchase securities of, or otherwise invest in, any open- or closed-end fund primarily designed to acquire thrifts or other insured depository institutions.

[2] Such actions include, but are not limited to, mergers, acquisitions, transactions under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) or similar actions beyond the employee's control.

(c) While employed by the Board an employee may not knowingly acquire, directly or indirectly, any financial interest which conflicts or, appears to conflict, with his or her official duties and responsibilities.

(d)(1) Except as provided in paragraph (d)(2) of this section, an employee may own or control investments described in paragraph (c) of this section whenever:

(i) Ownership or control was acquired prior to commencement of Board employment, or after commencement of employment, through a change in marital status or through circumstances beyond the employee's control, such as inheritance, gift, or merger, acquisition or other change in corporate ownership;

(ii) The employee makes full, written disclosure on the prescribed form to the DAEO within 30 days of commencing employment or acquiring the interest; and

(iii) The employee is disqualified from participating in any decision or other action having a direct and predictable impact on the employee's financial interest: *Provided,* That the President, after consultation with the DAEO and the Office of Government Ethics, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the Board.

(2) The employee may be required to dispose of his or her interest in securities whenever disqualification under paragraph (d)(1) of this section might impair the employee's ability to perform his or her Board duties and responsibilities.

(e) An employee may have an indirect interest in otherwise prohibited investments which arises through ownership of shares (or other investment units) of publicly held companies, mutual funds, or investment trusts which have broadly diversified portfolios not specializing in any particular industry and which are:

(1) Widely held and are not under the employee's control; or

(2) Limited partnership interests in large public partnerships (i.e., one which has at least 39 partnership interests) and less than 25% of the gross revenues of the limited partnership is derived from firms doing business with the RTC.

The employee is disqualified, however, from participating in any particular matter having a direct and predictable impact on the employee's financial interest in such investments: *Provided,* That the President, after consultation with the DAEO and the Office of Government Ethics, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the Board.

§ 1505.19 Purchase of assets of institutions in conservatorship or receivership.

(a) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which, to the employee's knowledge, the RTC manages as conservator of an insured depository institution or holds in its capacity as receiver, liquidator, or liquidating agent of the assets of an insured depository institution, regardless of how the property is sold.

(b) An employee who is involved in the disposition of such assets when the receivership assets shall disqualify himself or herself from participation in the dispostion of such assets when the employee becomes aware that any relative, or any organization or partnership with which the employee, the employee's spouse or dependent child is associated, has submitted a bid for purchase of such assets. The employee shall advise the President and the DAEO in writing of the self-disqualification.

(c) An employee shall not, directly or indirectly, use or release to persons outside the Board confidential information regarding the sale or disposition of assets.

§ 1505.20 Purchase of Board or RTC property.

An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase or bid on any property owned by the Board or owned or held by the RTC in its corporate capacity.

§ 1505.21 Providing goods or services to the Board or RTC.

An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, provide any goods or services for compensation to the Board or RTC unless the President determines, subject to the prohibitions in 18 U.S.C. 203 and 205, that there is a most compelling reason to do so, such as where the Board's or RTC's needs cannot be otherwise met. For the purposes of this section, the term "services" does not include services as required by the employee's position with the Board.

§ 1505.22 Outside employment and other activity.

(a) An employee shall not engage in employment or other activity outside the scope of his or her Board employment which is not compatible with the full and proper discharge of the employee's duties and responsibilities to the Board. Employment or activity which is not compatible with the employee's duties and responsibilities to the Board includes, but is not limited to, that which results in, or creates an appearance of, a conflict of interest or impairs the employee's physical or mental capacity to perform the duties and responsibilities of his or her position with the Board. Such employment or activity may involve:

(1) Service, with or without compensation, as an organizer, incorporator, director, officer, trustee, or representative of, or advisor or consultant to, or in any other capacity with, any insured depository institution, including a credit union;

(2) Service, with or without compensation, in any capacity with an investment advisor, investment company, investment fund, mutual fund, insurance company, stockbroker, underwriter, or any other person engaged in providing financial services; or

(3) Active participation in or conduct of a business dealing with or related to real estate including, but not limited to, real estate brokerage, management and sales, property insurance and appraisal services.

(b) An employee shall not engage in outside employment or other activity, with or without compensation, with any person or entity doing business with the Board or RTC.

(c) An employee shall not accept any money or anything of monetary value from a private source as compensation for the employee's service to the Board or RTC. (See 18 U.S.C. 209.)

(d) An employee shall not, directly or indirectly, receive compensation for representational services rendered by himself or herself or another before an agency of the Federal or District of Columbia Government on matters in which the United States has an interest. (See 18 U.S.C. 203.)

(e) Except as provided in paragraph (f) of this section, an employee shall not represent anyone before an agency or court of the Federal or District of Columbia Government, with or without compensation, in matters in which the United States has an interest, other than in the proper discharge of the employee's official duties. (See 18 U.S.C. 205.)

(f) An employee must obtain the prior written approval of the President, after consultation with the DAEO, in order to represent a parent, spouse, child, or person or estate for which he or she serves as a guardian, executor, administrator, trustee, or personal fiduciary, with or without compensation. (See 18 U.S.C. 205.)

(g) This section does not preclude an employee from participating in the activities of:

(1) Charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organizations, so long as such participation does not violate § 1505.16 or 18 U.S.C. 203 or 205; or

(2) National or state political parties, if not prohibited by law.

(h) Any employee who engages in, or intends to engage in, outside employment or other activity must obtain the prior written approval of the President who, after consultation with the DAEO, will determine whether such employment or activity is compatible with the purposes of this part.

§ 1505.23 Employment of family members by persons other than the Board or RTC.

(a) In order to avoid a conflict of interest or the appearance of a conflict, a covered employee shall report to the President the employment of the employee's spouse, child, parent, brother, sister, or a member of the employee's immediate household, within 30 days of when the employee becomes aware of it; by:

(1) An insured depository institution or its affiliate;

(2) A firm or business with which, to the employee's knowledge, the Board or RTC has a contractual or other business or financial relationship; or

(3) A firm or business which, to the employee's knowledge, is seeking a business or contractual relationship with the Board or RTC.

(b) A covered employee will not be assigned to any matter directly involving the family member's employer unless the President, after consultation with the DAEO, makes a prior determination that the nature of the family member's employment makes it unlikely that the employee's services to the Board will be affected by participation in the matter. In making determinations under this section, significant weight shall be given to the policy-making character of the family member's position. Under most circumstances, positions which are clerical or lacking policy-making character would not require disqualification.

Subpart D—Confidential Statements of Employment and Financial Interests; Public Financial Disclosure Reports; and Report of Employment Upon Resignation

§ 1505.24 Confidential statement of employment and financial interests.

(a) *General.* All Board employees, including employees of other agencies detailed to the Board, classified at GS–13 to GS–15, or at a comparable pay level under the Board's personnel authority, shall be deemed to be covered employees for the purpose of filing confidential statements of employment and financial interests pursuant to this section. The President, after consultation with the DAEO and the Office of Government Ethics, may require the filing of such statements by employees at pay levels below GS–13, or a comparable pay level under the Board's personnel authority, when it is determined to be essential to protect the integrity of the Government and avoid possible conflict of interest situations.

(b) *Submission of Statements.* (1) Covered employees will be required to file statements of employment and financial interests within 30 days of initial employment, and each reappointment thereto and annually thereafter with information as of June 30. Covered employees who have commenced employment within 90 days of June 30 need not submit another statement for such reporting period.

(2) Statements shall be made upon forms prescribed by the Board. Instructions accompanying the forms will indicate where the statement is to be submitted. Each covered employee required to file shall be notified of their obligation.

(3) Each statement of employment and financial interests and its instructions will require the covered employee to supply information on:

(i) All other employment; and

(ii) The financial interests of the employee which have been determined to be relevant in light of the duties he or she is to perform, including, but not limited to, the name of companies in which he or she has a financial interest, and the nature of such financial interest.

(c) *Confidentiality of statements.* Statements of employment and financial interests shall be held in confidence. Statements shall be received, reviewed, and retained in the office of the DAEO, who shall be responsible for maintaining the statements in confidence.

§ 1505.25 Public Financial Disclosure Reports.

Officers and employees (including special Government employees, who are expected to serve in excess of 60 days out of a 365 day period) whose positions are classified at GS–16 or above of the General Schedule, or whose basic rate of pay (excluding "step" increases) under other pay schedules is equal to or greater than the rate for GS–16 (step 1), and employees whose positions are excepted from competitive service by reason of being of a confidential or policy-making character (unless otherwise excluded by the Office of Government Ethics) must file Financial Disclosure Reports (SF 278) upon appointment, termination, and annually in accordance with the regulations of the Office of Government Ethics, 5 CFR part 2634 (formerly 5 CFR part 734). Oversight Board members who are employees of other government agencies will file their reports with their employing agency, and pursuant to FIRREA, file a copy with the RTC ethics counselor.

§ 1505.26 Report of employment upon resignation.

Each cover employee shall report to the DAEO on a prescribed form his or her resignation to accept employment in the private sector. Such report shall include pertinent information regarding the prospective employment and shall be made as soon as possible but in no event less than two weeks prior to the effective date of resignation.

Subpart E—Limitations on Activities of Former Employees, Including Special Government Employees

§ 1505.27 Limitations on representation.

(a) No former employee or special government employee, after terminating government employment, shall knowingly act as agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States:

(1) To any department, agency, or court of the Untied States;

(2) In connection with any particular government matter involving a specific party; and

(3) In which such employee or special government employee participated personally and substantially as an employee or special government employee through decision, approval, disapproval, recommendation advice, investigation, or otherwise.

See 18 U.S.C. 207(a) and 5 CFR 2637.201 (formerly 5 CFR 737.5(a)).

(b) No former employee or special government employee, within two years after termination of employment with the Board, shall knowingly act as agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the Untied States:

(1) To any department, agency, or court of the United States;

(2) In connection with any particular government matter involving a specific party; and

(3) If such matter was actually pending under the employee's responsibility as an officer or employee within a period of one year prior to the termination of such responsibility.

See 18 U.S.C. 207(b)(i) and 5 CFR 2632.202 (formerly 5 CFR 737.7(a)).

(c) No former senior employee, within two years after termination of employment with the Board or RTC, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person, except the United States, by personal presence at any formal or informal appearance:

(1) Before any department, agency, or court of the United States;

(2) In connection with any particular government matter involving a specific party; and

(3) In which matter he or she participated personally and substantially while an employee.

See 18 U.S.C. 207(b)(ii) and 5 CFR 2637.203 (formerly 5 CFR 737.9(a)).

(d) The provisions of paragraphs (a), (b), and (c) of this section shall not apply to the participation of a former employee or special government employee, other than those persons described in paragraph (e) of this section, in matters of general application, such as rulemaking, proposed legislation or regulations, and the formulation of general policy standards or objectives but shall apply to rulemaking having a direct and predictable effect on a certain party or group of parties. (5 CFR 2637.201 (formerly 5 CFR 737.5(c)).

(e) For a period of one year after termination of employment with the Board, no former senior employee (other than a special government employee who serves for fewer than sixty (60) days in a calendar year) shall knowingly act as an agent or attorney for, or otherwise represent any other person except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States to the Board or RTC or any of its officers or employees in connection with any particular government matter, whether or not involving a specific party, which is pending before the Board or RTC, or in which the Board or RTC has a direct and substantial interest. See 18 U.S.C. 207(c) and 5 CFR 2637.204 (formerly 5 CFR 737.11).

§ 1505.28 Limitations on aiding or advising.

(a) For a period of one year after termination of employment with the Oversight Board, no former covered employee, including a former senior employee, shall knowingly act as agent or attorney for, or otherwise aid or advise any other person (except the United States), concerning any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, or other particular matter:

(1) In which the former employee knows that the United States is a party or has a direct and substantial interest;

(2) That involves the same specific party or parties; and

(3) In which matter he or she participated personally and substantially while an employee.

(b) For purpose of paragraph (a) of this section, the limitations on aiding and advising shall only apply to particular matters about which the former employee had access to information which is exempt from disclosure under section 552 of title 5 of the United States Code, and which is so designated by the Oversight Board or RTC and which information is the basis for the aid or advice.

§ 1505.29 Consultation as to propriety of appearance before the Board or RTC.

Any former employee who wishes to appear before the Board or RTC on behalf of any person other than the United States, or an agency thereof, at any time after termination of employment with the Board, may consult the DAEO as to the propriety of such appearance.

§ 1505.30 Suspension of appearance privilege.

Any former employee or special government employee who, knowingly fails to comply with the provisions of this subpart, may be prohibited from making an appearance before or an oral or written communication to the Board or RTC for such period of time as provided in procedures to be adopted by the Board or RTC.

Subpart F—Ethical and Other Conduct and Responsibilities of Special Government Employees

§ 1505.31 General

(a) Special government employees are those serving the Board by performing temporary duties either on a full time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days. The two independent members of the Board and members of the National and Regional Advisory Boards are expected to be special government employees.

(b) The rules of conduct contained in subparts A, B, C, D, and E of this part shall also apply to special government employees insofar as their employment with the Board is concerned, except as otherwise indicated in this subpart F. Thus, for example, the prohibition in § 1505.14(e), concerning active participation in political management or campaigns (5 U.S.C. 7321 *et seq.*, the Hatch Act), only applies to special government employees on days that they serve the Board, and the general restrictions imposed on outside employment and investments by subpart C of this part do not apply to special government employees as long as they are disqualified from dealing with particular matters affecting their employers or financial interests.

§ 1505.32 Applicability of 18 U.S.C. 203 and 205.

(a) The prohibitions in 18 U.S.C. 203 and 205 applicable to special government employees are less stringent than those which affect regular employees. These two sections in general operate to preclude a regular Government employee, except in the discharge of his or her official duties, from representing another person before a department, agency or court, whether with or without compensation, in a matter in which the United States is a party or has a direct and substantial interest. However, the two sections impose only the following major restrictions upon a special government employee:

(1) He or she may not, except in the discharge of his or her official duties represent anyone else (or receive compensation from another's representation) before a court or Government agency in a particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he or she has at any time participated personally and substantially in the course of his or her

Government employment. What constitutes personal and substantial participation in a matter is discussed in § 1505.34(b).

(2) He or she may not, except in the discharge of his or her official duties, represent anyone else (or receive compensation from another's representation) in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and which is pending before the agency he or she serves. However, this restraint is not applicable if he or she has served the agency no more than 60 days during the past 365. He or she is bound by the restraint, if applicable, regardless of whether the matter is one in which he or she has ever participated personally and substantially.

(b) These restrictions prohibit both paid and unpaid representation and apply to a special government employee on the days when he or she does not serve the Government as well as on the days when he or she does.

(c) A special government employee who undertakes service with the Board, and another Federal entity, including the RTC, shall inform each of his or her arrangements with the other.

(d) There may be situations where a special government employee has a responsible position with his or her regular employer which requires the employee to participate personally in a particular matter before the Board or RTC. In this situation, assuming that such representation is not prohibited by 18 U.S.C. 203 or 205, the special government employee should participate in the matter for his or her regular employer only with the knowledge and approval of the President, after consultation with the DAEO. However, an independent member of the Oversight Board or a member of a National or Regional Advisory Board may not represent his or her regular employer in, and must be fully recused from agency deliberations or actions concerning any contract or other particular matter such employer has before or involving the Oversight Board or RTC, and must also be prohibited from sharing in any fees or profits directly attributable to such contract or other particular matter. Employers of those who serve as independent members of the Oversight Board or members of a National or Regional Advisory Board are not barred from contracting with the Oversight Board.

(e) Section 205 of title 18, U.S.C., permits a special government employee to represent, with or without compensation, a parent, spouse, child, or another person or an estate he or she serves as a fiduciary, but only if he or she has the approval of the official responsible for appointments to his or her position and the matter involved is neither one in which he or she has participated personally or substantially nor one under his or her official responsibility. What constitutes personal and substantial participation in a matter is discussed in § 1505.34(b). The term "official responsibility" is defined in 18 U.S.C. 202 to mean the direct administrative or operating authority, whether immediate or final and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct action in the Board or RTC.

§ 1505.33 Applicability of 18 U.S.C. 207.

Section 207 of title 18, U.S.C., applies to individuals who have left Government service, including former special government employees. It prevents a former employee or special government employee from representing another person in connection with certain matters (or making oral or written communications, with the intent to influence, to the Government or a court) in which he or she participated personally and substantially on behalf of the Government. The matters are those involving a specific party or parties in which the United States is also a party or has a direct and substantial interest. What constitutes personal and substantial participation in a matter is discussed in § 1505.34(b). In addition, section 207 of title 18 U.S.C. prevents a former employee for a period of two years after his or her responsibility for a matter has ceased, from representing another person (or making oral or written communications with the intent to influence) in such matter before a court, department or agency if the matter was actually ending within the area of his or her official responsibility at any time in the last year prior to termination of the employee's responsibility.

§ 1505.34 Applicability of 18 U.S.C. 208.

(a) Section 208 of title 18, U.S.C., bears on the activities of Government personnel, including special government employees in the course of their official duties. In general, it prevents an employee or special Government employee from participating personally and substantially as a Government officer or employee in a particular matter in which, to his or her knowledge, the employee, the employee's spouse, minor child, partner, or a profit or nonprofit organization with which the employee has or is serving as officer, director, trustee, partner or employee, or any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment, has a financial interest. Waivers may be granted by the President, after consultation with the DAEO and the Office of Government Ethics. Until a waiver is granted, special government employees are disqualified from participating in any matter in which such a financial interest exists.

(b) For the purposes of 18 U.S.C. 208, the phrase "participates personally and substantially in a particular matter" applies to participation through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, change, accusation, arrest, or other particular matter. Accordingly, a special government employee should in general be disqualified from participating as such in a matter of any type the outcome of which will have a driect and predictable effect upon the financial interests covered by section 208.

§ 1505.35 Use of Board employment.

A special government employee shall not use his or her Board employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself of herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 1505.36 Use of inside information.

(a) A special government employee shall not use any inside information obtained as a result of his or her Board employment for private gain for himself or herself or another person, either by direct action on his or her part or by counsel, recommendation, or suggestion to another person, particularly one with whom he or she has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under Board or RTC authority which has not become part of the body of public information.

(b) The provisions of § 1505.11(a) through (d) with regard to employees shall be applicable to special government employees.

§ 1505.37 Coercion.

A special government employee shall not use his or her Board employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or herself or another person particularly one with whom he or she has family, business, or financial ties.

§ 1505.38 Advice on rules of conduct and conflicts of interest statutes.

Any special government employee having any doubt as to the ethics of any conduct falling within the conflicts of interest statutes, or regulations, should confer with the DAEO. Assistance in interpreting the conflicts of interest statutes, these regulations, and any other instructions involving conduct and conflicts of interest, will also be provided by the DAEO to any special government employee, prospective special government employee, and their appointing officials and supervisors desiring it.

§ 1505.39 Disclosure of employment and financial interests.

Special government employees will be required to file a confidential statement of employment and financial interests in accordance with § 1505.24, or a Financial Disclosure Report (SF 278) in accordance with § 1505.25.

Subpart G—Competence, Experience, Integrity, and Fitness of Resolution Trust Corporation Employees.

§ 1505.40 Minimum competence, experience, integrity, and fitness requirements for Resolution Trust Corporation employees.

(a) For the purposes of this section:

(1) *"Default"* has the meaning set forth in 12 CFR 1506.2(d).

(2) *"Pattern or practice of defalcation"* has the meaning set forth in 12 CFR 1506.2(k).

(3) *"Loss"* has the meaning set forth in 12 CFR 1506.2(g).

(4) *"Material obligation"* has the meaning set forth in 12 CFR 1506.2(i).

(5) *"Substantial loss to the Federal Deposit insurance funds"* has the meaning set forth in 12 CFR 1506.2(t).

(b) The RTC shall prescribe policies and procedures which, at a minimum ensure that any individual (not subject to the regulations at 12 CFR part 1506 or 12 CFR part 1606) who is performing, directly or indirectly, any function or service on behalf of the RTC meets minimum standards of competency, experience, integrity, and fitness and that only persons meeting such minimum standards:

(1) Enter into any contract with the RTC; or

(2) Are employed by the RTC or otherwise perform any service for or on behalf of the RTC.

(c) The standards established by the RTC in its policies and procedures issued pursuant to paragraph (a) of this section shall, at a minimum, prohibit from service on its behalf any person who has:

(1) Been convicted of any felony;

(2) Been removed from, or prohibited from participation in the affairs of, any insured depository institution pursuant to any final enforcement action by any appropriate Federal banking agency;

(3) Demonstrated a pattern or practice of defalcation regarding obligations to insure depository institutions; or

(4) Caused a substantial loss to Federal deposit insurance funds.

(d) The RTC shall prescribe policies and procedures which require that any offer (not subject to the regulations at 12 CFR part 1506 or 12 CFR part 1606), and any employment application submitted to the RTC, include a list and description of any instance during the preceding 5 years in which the person or company under such person's control defaulted on a material obligation to an insured depository institution; and such additional information as the RTC determines to be necessary.

Daniel P. Kearney,

President and Chief Executive Officer, Oversight Board.

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Part VI

Resolution Trust Corporation

12 CFR Part 1605
Employee Responsibilities and Conduct; Final Rule

RESOLUTION TRUST CORPORATION

12 CFR Part 1605

RIN 3205-AA00

Employee Responsibilities and Conduct

AGENCY: Resolution Trust Corporation.

ACTION: Final rule.

SUMMARY: The Resolution Trust Corporation ("RTC") is adopting these rules and regulations, 12 CFR part 1605, which prescribe standards of ethical and other conduct for RTC employees, in implementation of the provisions of section 21A(p)(2) of the Federal Home Loan Bank Act, 12 U.S.C. 1421 *et seq.*, as added by section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 183, 363. These regulations are being adopted to ensure that the employees of the RTC maintain the highest level of ethical conduct and to maintain public confidence in the RTC.

EFFECTIVE DATE: February 5, 1990.

FOR FURTHER INFORMATION CONTACT: Katherine A. Corigliano, Assistant Executive Secretary (Ethics), 202-898-7272.

SUPPLEMENTARY INFORMATION: On December 22, 1989, the RTC issued for public comment a proposed regulation, 12 CFR part 1605, which provides standards of ethical and other conduct of RTC employees (54 FR 52806). The Office of Government Ethics ("OGE") has reviewed the regulation for consistency with applicable law and regulation.

In addition to written comments received from the OGE, the Oversight Board of the RTC, in its proposed regulations published on January 9, 1990, mandated the addition of a new subpart to cover the statutory prohibition of employment of certain individuals. This substantive addition, included in subpart G, defines the minimum competence, experience, integrity, and fitness requirements for RTC employees. Finally, comments on the proposed regulations were received from the General Accounting Office ("GAO"), two trade associations, and two private individuals.

In response to the comments received from OGE, the regulation has been revised to reflect more accurately the current status of the law which requires the RTC, before providing a waiver under 18 U.S.C. 208(b)(1), to consult with OGE. Interpretive guidance pertaining to the use of one's official title in any circumstance which would create, or appear to create, the use of public office for the private gain of any person has also been added. Comments received from GAO suggested that contractors, who perform functions or activities of the RTC or Oversight Board under the direct supervision of an officer or employee of the RTC or Oversight Board, be treated as both RTC employees and as covered employees for the purpose of the regulation. Other comments from OGE and GAO suggested clarifications of language.

One trade association commented on the applicability of the statutory bars of FIRREA to Advisory Board members. The RTC has no latitude to waive these provisions. Another trade association commented on the disproportionate impact of the regulations applicable to Advisory Board members on smaller firms wishing to contract with the RTC and the Oversight Board and also serve on these Advisory Boards. This language now reflects a bar on representation before the RTC or the Oversight Board rather than on participation in a contract with the RTC or Oversight Board. However, a provision has been added to ban the Advisory Board member from sharing in the profits derived from the business relationship of his or her employer and the RTC.

One individual commented on the applicability of these regulations to U.S. military reserve duty. These regulations do not impose any restrictions to one's service in this capacity and are consistent with regulations for any Executive Branch employee who serves in the military reserves. Another individual commented on the credit restrictions found in § 1605.16 and other technical changes. The credit restrictions have been modified to include fewer employees than the definition of "covered employees."

Subpart G sets out the statutory prohibitions with regard to the employment of persons who do not meet the minimum standards of competence, experience, integrity, and fitness from service on behalf of the RTC. These statutory bars apply to any person who has been convicted of a felony, been removed from, or prohibited from participating in the affairs of, any depository institution pursuant to any final enforcement action by any appropriate Federal banking agency, demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions or caused a substantial loss to Federal deposit insurance funds. The adoption of the statutory bars has necessitated the addition of several definitions in subpart A § 1605.2.

After considering all comments, the Board of Directors has determined to adopt the regulation substantially in the form proposed except for the changes noted above.

List of Subjects in 12 CFR Part 1605

Conflict of interests; Credit; Disclosure requirements; Government employees; Former government employees.

Accordingly, part 1605 is proposed to be added to chapter XVI of title 12 of the Code of Federal Regulations as follows:

PART 1605—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—Purpose, Scope, Definitions, and Administrative Provisions

Subpart B—Ethical and Other Conduct and Responsibilities of RTC Employees

Subpart C—Financial Interests and Obligations; Outside Employment

Subpart D—Reports of Interest in Insured Depository Institution Securities, Interest in RTC Decision, and Employment Upon Resignation; Statements of Employment and Financial Interests; Financial Disclosure Reports

Authority: 3 CFR 1964–1965 Comp.; 5 CFR 735.104; 5 CFR 2637.10(a); E.O. 12674; 12 U.S.C. 1441a(p)(2).

Subpart A—Purpose, Scope, Definitions, and Administrative Provisions

§ 1605.1 Purpose and scope.

In order to assure the proper performance of RTC business and to maintain public confidence in government, members, officers, and employees of the RTC (hereinafter collectively referred to as "RTC employees") are expected to maintain unusually high standards of honesty, integrity, impartiality, and conduct and to avoid misconduct and conflicts of interest, or the appearance of conflicts of interest. This part establishes the policies and procedures of the RTC with regard to the ethical and other standards of conduct and responsibilities for employees and special government employees. Permissible financial interests, obligations, and outside employment are set forth in this part together with the policies and procedures for employee reporting of financial interests and obligations.

§ 1605.2 Definitions.

For the purposes of this part:

(a) *"Affiliate"* means any depository institution holding company of which an insured bank or insured savings association is a subsidiary and any other subsidiary of such depository institution holding company. Any entity which is a subsidiary of an insured bank or insured savings association shall be deemed to be an affiliate of that insured bank or insured savings association.

(b) *"Appearance"* means an individual's physical presence before the United States in any formal or informal setting or conveyance of material to the United States in connection with a formal proceeding or application. A communication is broader than an appearance and includes, for example, correspondence or telephone calls.

(c) *"Appropriate director"* means the Executive Director of the RTC and all other persons holding director positions within the RTC including regional directors or regional counsel assigned to the RTC.

(d) *"Assisted entity"* means: (1) Any insured depository institution which has received financial assistance from the RTC to prevent its failure; (2) any insured depository institution resulting from a merger or consolidation with any insured depository institution described in paragraph (d)(1) of this section; or (3) any parent depository institution holding company of an insured depository institution described in paragraph (d)(1) of this section; *Provided*, That an ongoing financial relationship, including, but not limited to, the repayment of a loan, the servicing of assets, or the existence of stock or warrants, exists between such insured depository institution or depository institution holding company and the RTC.

(e) *"Assuming entity"* means any insured depository institution or depository institution holding company which has entered into a transaction with the RTC to purchase some or all of the assets and assume some or all of the liabilities of a failed insured depository institution for a period of one year following the closing of such failed insured depository institution.

(f) *"Attorney"* means any individual employed by the FDIC as an attorney, whether or not assigned to the Legal Division, who is assigned or detailed to perform functions or activities of the RTC. The term does not include outside attorneys engaged in the private practice of law and retained by the RTC.

(g) *"Chairperson"* means the Chairperson of the Board of Directors of the RTC.

(h) *"Conservator"* means the RTC when appointed to take over the management of the affairs of an insured depository institution.

(i) *"Covered employee"* means any employee required to file a statement of employment and financial interests or a Financial Disclosure Report pursuant to § 1605.28(a) or § 1605.29.

(j) *"Defalcation"* means:

(1) Any default on any obligation to pay principal or interest to an insured depository institution; or

(2) Any act that was intended to cause a loss to an insured depository institution; or

(3) A borrower's entering into a loan agreement with an insured depository institution, the making of which was an unsafe or unsound action of the institution on the basis of facts that the borrower knew or should have known, and the borrower's default on such loan in the amount of $50,000 or more.

(k) *"Default"* means:

(1) In the case of a delinquency of 90 or more days as to payment of principal or interest on a loan or advance from an insured depository institution; or

(2) A failure to comply with the terms and conditions of a contract with the FDIC, the Federal Savings and Loan Insurance Corporation ("FSLIC"), or the RTC, or an insured depository institution, other than a loan or advance.

(l) *"Dependent child"* means a son, daughter, stepson, or stepdaughter who either:

(1) Is unmarried, under 21, and living in the employee's household; or

(2) Has received over half of his or her support from the employee in the preceding calendar year.

(m) *"FDIC"* means the Federal Deposit Insurance Corporation, in its corporate or receivership capacity or as conservator of an insured depository institution.

(n) *"Honorarium"* means a payment, usually for services on which custom or propriety forbids a price to be set.

(o) *"Independent contractor"* means the individual or entity whose work product is supervised by the RTC, but whose employees do not perform functions or activities of the RTC under the direct supervision of an officer or employee of the RTC.

(p) *"Insured depository institution"* means any bank or savings association the deposits of which are insured by a Federal deposit insurance fund administered by the FDIC.

(q) *"Investment"* means any interest in securities, real property, limited

partnerships, or other assets held for the production of income.

(r) *"Loss"* means:

(1) An obligation as to which there is a continuing legal claim that is owed to an insured depository institution, or to a Federal deposit insurance fund, the FSLIC, or to the RTC that is 12 months or more deliquent as to principal or interest; or

(2) An obligation to pay an outstanding, unsatisfied, final judgment based on any legal theory in favor of any insured depository institution, Federal deposit insurance fund, the FSLIC, or the RTC.

(s) *"Material obligation"* means an obligation which, if not satisfied, would cause a loss of $50,000 or more.

(t) *"Member of the employee's immediate household"* means a person who is related to the employee by blood, marriage, or adoption and who resides in the same household as the employee.

(u) *"Official responsibility"* means the direct administrative, supervisory, or decisional authority, whether intemediate or final, exercisable alone or with others, personally or through subordinates, to approve, disapprove, decide, recommend or advise official action, to investigate, or to express staff opinions in dealings with the public.

(v) *"Oversight Board"* means the oversight board established to oversee and be accountable for the RTC.

(w) *"Pattern or practice of defalcation"* means:

(1) There are two or more instances of defalcation as defined in § 1606.2(c)(1) of this chapter with respect to which there are continuing legal claims in an aggregate amount in excess of $50,000; or

(2) There are two or more instances of defalcation as defined in § 1606.2(c)(2) of this chapter.

(x) *"Person"* means an individual, insured depository institution, corporation, company, association, partnership, firm, society, or any other organization or institution.

(y) *"Reviewing official"* means the Deputy Ethics Counselor delegated the authority to receive, review, and retain statements of employment and financial interests filed by covered employees assigned to his or her division, office, or consolidated office.

(z) *"RTC"* means the Resolution Trust Corporation and includes the National Advisory Board and and the Regional Advisory Boards.[1]

(aa) "RTC employee" means any individual member of the Board of Directors, officer, employee, or individual who, pursuant to a contract or any other arrangement, performs functions or activities of the RTC under the direct supervision of an officer or employee of the RTC including a liquidation graded employee of the FDIC assigned to and performing only the responsibilities of the RTC in the FDIC'S capacity as the exclusive manager of the RTC, but does not include a special government employee, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, any person employed by the Office of the Comptroller of the Currency or the Office of Thrift Supervision, or any personnel utilized from any executive department or agency. The term does not include independent contractors retained by the RTC whose conduct is regulated by part 1606 of this chapter.

(bb) *"Security"* means any note, stock treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement, pre-organization certificate or subscription, investment contract, voting trust certificate, or in general, any interest or instrument commonly known as a security, but does not include a deposit.

(cc) *"Senior employee"* means any individual member of the Board of Directors of the RTC any employee named or designated by the Director of the U.S. Office of Government Ethics pursuant to 18 U.S.C. 207(d)(1).

(dd) *"Special government employee"* means any employee or contractor, other than an independent contractor, serving the RTC with or without compensation, including the members of the National Advisory Board and the members of the Regional Advisory Boards, for a period estimated not to exceed 130 days during any 365-day period on a full-time or intermittent basis.

(ee) *"Subsidiary"* means a company the voting stock of which is 50 percent or more owned or controlled by another company.

(ff) *"Substantial loss to the Federal deposit insurance funds"* means a loss of more than $50,000 to the funds maintained by a Federal deposit insurance agency for the protection of depositors.

§ 1605.3 Employee responsibility, counseling, and distribution of regulation.

(a) Each employee or special government employee of the RTC is responsible for being familiar with and complying with the provisions of this part. The Ethics Counselor and Deputy Ethics Counselors shall be available for counseling and guidance as to the statutes and regulations affecting employee responsibility and conduct, including interpretation of this part.

(b) The Ethics Counselor shall provide a copy of this part to each new employee or special government employee within 30 days of commencement of employment or engagement, and each such employee or special government employee shall complete and file the Certification and Acknowledgment of RTC Standards of Conduct Regulation in accordance with its instructions. The Ethics Counselor shall annually distribute a reminder of the basic provisions of this part to each employee and each special government employee.

(c) An employee who believes that his or her assignment to a matter may result in a conflict of interest or the appearance of a conflict of interest shall report immediately all relevant facts to his or her appropriate director.

§ 1605.4 Designation of Ethics Counselor, Alternate Ethics Counselor, and Deputy Ethics Counselors.

(a) The RTC's ethics program shall be coordinated and managed by the Ethics Counselor. The Executive Secretary of the FDIC shall act as the RTC's Ethics Counselor.

(b) The Assistant Executive Secretary (Ethics) of the FDIC shall act as the RTC's Alternate Ethics Counselor and shall act as Ethics Counselor in the absence of the Ethics Counselor.

(c) The Ethics Counselor shall appoint one or more Deputy Ethics Counselors to whom the Ethics Counselor may delegate duties and responsibilities under this part. Duties and responsibilities so delegated may not be redelegated.

§ 1605.5 Sanctions and remedial actions.

(a) Any violation of this part by an employee or special government employee may be cause for disciplinary or remedial action, which may be in addition to any penalty prescribed by law.

(b) Disciplinary action may include, but is not limited to, oral or written warning or admonishment, reprimand, suspension, or removal from office, which action shall be taken in accordance with applicable law, executive order, and regulation.

(c) Remedial action, when appropriate, may include, but is not limited to, divestment of conflicting

[1] The RTC is an agency of the United States when it is acting as a corporation. When it is acting as a conservator or receiver of an insured depository institution, it is deemed to be an agency of the United States to the same extent as the Federal Deposit Insurance Corporation when it is acting as a conservator or receiver of an insured depository institution.

interests, change in assigned duties, or disqualification from a particular assignment or a particular matter.

(d) Unless an employee or special government employee requests review of an order of remedial action pursuant to § 1605.6 of this part such order of remedial action, other than disqualificaton, shall take effect 20 days after receipt of notice thereof, and disqualification shall take effect immediately. Any order of remedial action reviewed and approved pursuant to § 1605.6 of this part shall take effect immediately upon receipt of notice of the final determination of the Chairperson (or his or her designee).

§ 1605.6 Review of remedial actions.

When remedial action is ordered pursuant to § 1605.5 of this part, the affected employee or special government employee may request the Chairperson to review such order. Any request for review shall be made in writing within 20 days of receipt of notice of the order and shall contain a statement of reasons for such request. The Chairperson (or his or her designee) will promptly review the matter and will provide written notice of his or her determination which determination shall be final.

Subpart B—Ethical and Other Conduct and Responsibilities of RTC Employees

§ 1605.7 General rules.

RTC employees are expected to maintain unusually high standards of honesty, integrity, impartiality, and conduct and to avoid misconduct and conflicts of interest, or the appearance of conflicts of interest. No employee shall engage in any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding the RTC's efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making an RTC decision outside official channels; or

(f) Adversely affecting the public's confidence in the integrity of the RTC.

§ 1605.8 Gifts, entertainment, favors, and loans.

(a) Except as provided in paragraph (b) of this section, no employee may solicit or accept for himself or herself or for another person, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or other thing of monetary value from a person who:

(1) Has or seeks contractual or other business or financial relationships with the RTC;

(2) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; or

(3) Is an officer, director, or employee of any insured depository institution or of any professional, trade, or business association comprised of members who do or seek to do business with the RTC.[2]

(b) The prohibitions of paragraph (a) of this section do not apply:

(1) To the solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative where it is clear from the circumstances that personal or family relationships rather than the business of the persons concerned are the motivating factors;

(2) To the acceptance of unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, and other items of nominal value;

(3) Except as otherwise provided in § 1605.16 of this part, to the acceptance of loans from insured depository institutions or other financial institutions on the customary terms and conditions offered to the general public;

(4) To the acceptance of food, refreshments, and accompanying entertainment of nominal value on infrequent occasions in the ordinary course of a conference, meeting, or other function at which an employee is properly in attendance in his or her official capacity; and

(5) To the acceptance of food, refreshments, and accompanying entertainment of nominal value offered in the course of a group function or widely attended gathering of mutual interest to the government and the private sector, such as receptions and informational programs sponsored or hosted by universities, educational associations, the financial services industry, technical and professional associations (including those that have as members firms doing business with the RTC), international organizations, or government entities where it has been determined that attendance is in the interest of the RTC and is related to its mission, in accordance with written guidelines issued by the Ethics Counselor.

[2] A professional, trade, or business association, a substantial majority of whose members are regulated by any federal banking agency, is itself a prohibited source of gifts, entertainment, favors, and loans for purposes of this section (See Office of Government Ethics, Informal Advisory Opinion No. 87x13, Acceptance of Food and Refreshments by Executive Branch Employees (1987)).

(c) Whenever an employee receives a gift or other item of monetary value the acceptance of which is prohibited by paragraph (a) of this section, or whenever a gift or other item of monetary value is received from a source other than a source described in paragraph (a) of this section and is given because of the employee's official position or in conjunction with official duties carried out by the employee, the employee shall notify the Ethics Counselor within ten days of receipt of such gift or item. The gift or item shall be promptly returned to the sender or otherwise disposed of as directed by the Ethics Counselor. The cost of returning such gift or item shall be borne by the RTC. (See 18 U.S.C. 209.)

(d) An employee may not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself or herself, unless it is a voluntary gift or donation of nominal value made on a special occasion such as marriage, illness, or retirement. (See 5 U.S.C. 7351.)

(e) An employee may not request or accept a gift, present, or decoration from a foreign government, except as permitted by law. (See 5 U.S.C. 7342.)

§ 1605.9 Travel expenses.

(a) Expenses of travel, lodging, and subsistence incurred by an employee while on official duty shall be paid for or reimbursed by the RTC (in accordance with the FDIC's General Travel Regulations), and an employee shall not accept payment or reimbursement for such expenses from any private source.

(b) On rare occasions where there is no practical alternative to acceptance, an employee may accept travel, lodging, or subsistence from a private source while on official duty. The employee must report the acceptance, value, and circumstances thereof to the appropriate director and the Ethics Counselor within 30 days of such acceptance. When appropriate, the RTC will reimburse the private source for the fair market value of such travel, lodging, or subsistence.

(c) For the purpose of this section, "subsistence" does not include food or refreshments accepted on infrequent occasions in the ordinary course of an official function or a widely attended gathering as permitted by § 1605.8 (b)(4) and (b)(5) of this part.

(d) Notwithstanding the provisions of 5 U.S.C. 4111, the RTC may and an employee may not (without the approval of the appropriate director, who shall have consulted with the Ethics

Counselor) accept travel, lodging, or subsistence when the donor is an organization which is exempt from taxation under 26 U.S.C 501(c)(3), and acceptance does not result in, or create the appearance of, a conflict of interest. The provisions of this section do not, however, prohibit employees, who are permanent employees of another executive department or agency being utilized by the RTC on a reimbursable basis, from accepting travel, lodging, or subsistence from a donor who is exempt from taxation under 26 U.S.C. 501(c)(3) where acceptance would be consistent with the other executive department's or agency's travel policies and regulations.

(e) When an employee is not on official duty and there is no payment or reimbursement by the RTC for expenses of travel, lodging, or subsistence, the employee may accept payment or reimbursement from a private source where acceptance is compatible with the purposes of this part and does not present a conflict of interest or the appearance thereof.

(f) The provisions of this section do not prohibit or require a report of the acceptance of travel, lodging, or subsistence provided by family members or personal frends.

§ 1605.10 Use of official information.

(a) Except as permitted in § 1605.11 of this part, an employee may not, directly or indirectly, use or allow the use of information which is obtained as a result of his or her RTC employment but which is not available to the general public in order to engage in any financial transaction or to further a private interest.

(b) An employee may not maintain, disclose, or otherwise use personal information in a manner which violates the Privacy Act of 1974, 5 U.S.C. 552a.

(c) An employee may not disclose confidential business information obtained in the course of his or her employment or official duties except as authorized by law. (See 18 U.S.C. 1905.)

§ 1605.11 Lectures, speeches, and manuscripts.

(a) No employee shall publish any material or speak before insured depository institutions or public organizations on matters involving the RTC unless the employee receives prior approval and prior clearance of material to be published by the Executive Director of the RTC (or his or her designee).

(b) An employee shall not use his or her official title without specific written approval by the appropriate director. An example of title use where approval is normally appropriate is where the employee's Government position is referred to in biographical information provided in conjuction with lectures, speeches, and manuscripts.

(c) An employee shall not use in any teaching, lecturing, speaking, or writing engagement information obtained as a result of his or her RTC employment unless the information is available to the general public, or the Executive Director of the RTC (or his or her designee) gives authorization for such use upon the determination that the use of the information is in the public interest.

(d) Except as provided in § 1605.8(b)(2) of this part, no employee may receive any compensation or other thing of monetary value for any speech, lecture, publication, or similar engagement, the subject matter of which relates specifically to matter involving the RTC or contains information that is not otherwise available to the general public.

(e) No employee may accept an honorarium of more than $2,000 for any appearance, speech, or article in connection with non-RTC related activities. No employee may accept an honorarium in connection with any appearance, speech, or article in connection with RTC-related matters. (See 2 U.S.C. 441i.)

(f) No employee who is appointed by the President to a full-time noncareer position in the RTC shall receive any earned income for any outside employment or activity performed during that Presidential appointment. (See E.O. 12674, section 102.)

§ 1605.12 Employment by RTC of relatives.

(a) For the purposes of this section:

(1) A "*relative*" is any person related to an Oversight Board official, an RTC official, a special government employee of the RTC, or any independent contractor to the RTC, as parent, stepparent, child, stepchild, brother, sister, stepbrother, stepsister, half-brother, half-sister, spouse, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daugther-in-law, brother-in-law, or sister-in-law.

(2) An "*official*" is any employee who has authority to appoint, employ, promote, or advance employees or to recommend anyone for appointment, employment, promotion, or advancement at the Oversight Board, the RTC, or the FDIC.

(3) A "*supervisor*" is any employee whose position require independent judgment to appoint, employ, promote, advance, assign, direct, reward, transfer, suspend, discipline, remove, adjust grievances, or furlough any person or to recommend any such action.

(b) An RTC official may not—

(1) Appoint, employ, promote, or advance any relative to a position at the Oversight Board, the RTC, or the FDIC;

(2) Advocate a relative's appointment, employment, promotion, or advancement at the Oversight Board, the RTC, or the FDIC; or

(3) Appoint, employ, promote, or advance a relative of another Oversight Board, RTC, or FDIC official if the official has advocated the relative's appointment, employment, promotion, or advancement.

(c)(1) No employee may be a supervisor of any relative.

(2) Whenever any employee becomes a supervisor of a relative, the employee shall report in writing that fact to the appropriate director. The appropriate director, in consultation with the Director of the FDIC's Office of Personnel Management, the RTC Personnel Branch Chief and the Ethics Counselor, shall determine whether the relative's position may be removed from the scope of the supervisor's authority, taking into consideration the nature of the supervisor's position, the operational needs of the division, and the potential for conflicts of interest or the appearance thereof. If it is determined that it is not feasible to remove the relative's position from the scope of the supervisor's authority, the appropriate director, the Director of the FDIC's Office of Personnel Management, and the Ethics Counselor shall determine whether the relative may be assigned to another position at the RTC which is outside the scope of the supervisor's authority.

§ 1605.13 Use of property and resources owned or controlled by the RTC.

An employee shall not, directly or indirectly, use or allow the use of any property or resources owned or controlled by the RTC (including, but not limited to, personnel, equipment, leased property, or property which the RTC holds in its capacity as receiver, liquidator, liquidating agent, or conservator of the assets of an insured depository institution) for other than officially approved activities. An employee has a positive duty to protect and conserve property, including equipment, supplies, and other property entrusted or issued to the employee.

§ 1605.14 Indebtedness, gambling, and other conduct.

(a) *Indebtedness.* An employee is expected to meet all just financial obligations, whether imposed by law or

contract. For the purpose of this section, a "just financial obligation" is one acknowledged by the employee or reduced to judgment by a court or one imposed by law such as federal, state, or local taxes. An employee who has difficulty in meeting his or her financial obligations may seek counseling with the FDIC's Office of Personnel Management. This section does not require the RTC to determine the validity or amount of any debt which is the subject of dispute between the employee and an alleged creditor.

(b) *Gambling.* An employee shall not participate in any gambling activity, including use of gambling devices, lotteries, pools, games for money or property, or numbers tickets, while on property owned or leased by the RTC or the government or while on duty for the RTC.

(c) *Crimes and dishonesty.* An employee shall not engage in criminal, dishonest, or other conduct prejudicial to the RTC. Any employee who has information indicating that another employee is engaging or has engaged in any criminal conduct or is violating or has violated any of the provisions of this part is encouraged to convey such information to the RTC's Inspector General.

(d) *Discrimination.* An employee shall not discriminate against any other employee or applicant for employment nor exclude any person from participating in nor deny any person the benefits of any program or activity administered by the RTC on the basis of race, color, religion, national origin, sex, age, or handicap.

(e) *Political Activity.* Employees have the right to vote as they may choose and to express their opinions on all political subjects and candidates but are generally forbidden to take an active part in polictical managment or campaigns. Prohibitions concerning political activities may be found in 5 U.S.C. 7321 *et seq.* (the Hatch Act) and 18 U.S.C. 602, 603, and 607.

(f) *Miscellaneous.* Other provisions with which an employee should be familiar include:

(1) The "Code of Ethics for Government Service," which prescribes general standards of conduct (Pub. L. No. 96-303, 94 Stat. 855-856);

(2) Prohibitions relating to bribery, conflicts of interest, and graft (18 U.S.C. 201-209);

(3) Prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918);

(4) Prohibitions against the disclosure of classified information (18 U.S.C. 798);

(5) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352);

(6) Prohibition against the misuse of a government vehicle (31 U.S.C. 1349(b));

(7) Prohibition against the misuse of the franking privilege (*i.e.*, prepaid postage) (18 U.S.C. 1719);

(8) Prohibition against the use of deceit in an examination or personnel action in connection with government employment (18 U.S.C. 1917);

(9) Prohibition against fraud or false statements in a government matter (18 U.S.C. 1001);

(10) Prohibition against mutilating or destroying a public record (18 U.S.C. 2071);

(11) Prohibitions against embezzlement of government money or property (18 U.S.C. 641); failing to account for public money (18 U.S.C. 643); and embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654);

(12) Prohibition against unauthorized use of documents relating to claims from or by the government (18 U.S.C. 285);

(13) Prohibition against an employee's acting as the agent of a foreign principal registered under the Foreign Agents Registration Act of 1938 (18 U.S.C. 219);

(14) Prohibition against the use of manipulatives or deceptive devices in connection with the purchase or sale of any security (17 CFR 240.10b-5);

(15) Prohibition against lobbying with appropriated funds (18 U.S.C. 1913); and

(16) Prohibition against the employment of an individual convicted of felonious rioting or related offenses (5 U.S.C. 7313).

Subpart C—Financial Interests and Obligations; Outside Employment

§ 1605.15 General rules.

(a) No employee shall have any direct or indirect financial interest or obligation that conflicts or appears to conflict with the employee's RTC duties and responsibilities.

(b) No employee may negotiate or have any arrangement concerning prospective employment with a person whose financial interests may be directly and substantially affected by the employee's performance of his or her RTC duties and responsibilities while the employee is personally and substantially engaged, as part of his or her official duties, in any matter affecting that person. (See 18 U.S.C. 208.)

(c) No employee may participate personally and substantially by decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other action, in any matter in which the employee, the employee's spouse, minor child, partner, or organization in which the employee serves as an officer, director, trustee, partner, or employee, has a financial interest (other than a deposit in an insured depository institution). (See 18 U.S.C. 208.)

(d) No partner of an employee or a special government employee may act as agent or attorney for any person other than the United States before the RTC in a matter in which the employee participates or has participated personally and substantially by decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise or which is the subject of the employee's official responsibility. (See 18 U.S.C. 207.)

(e) An employee shall disqualify himself or herself from participation in any matter in which he or she has a financial interest by notifying the appropriate director and the Ethics Counselor in writing of such matter and financial interest.

(f) The prohibitions of paragraphs (a), (b), (c), and (e) of this section shall not apply if the employee, other than the Chairperson or the Director(s) (Appointive),[3] receives the prior written determination of the Ethics Counselor, who shall consult with the Office of Government Ethics and the appropriate director, that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the RTC. (See 18 U.S.C. 208.)

§ 1605.16 Extensions of credit.

(a) Unless the credit is extended through the use of a credit card under the same terms and conditions as are offered to the general public and the total line of credit from any one institution does not exceed $10,000, the Executive Director, a division director, any deputy or assistant thereto, a regional director, a deputy regional director, Regional or Consolidated Office employees at or above the grade 5 level in job series 1160 or 301, and persons employed by the RTC as attorneys in Regional or Consolidated Offices of the RTC (including an employee of the FDIC detailed to the RTC in like positions) may not, directly or indirectly, accept or become obligated on any extension of credit from any insured depository institution

[3] The prohibitions of paragraphs (a), (b), (c), and (e) of this section shall not apply to the Chairperson if he or she receives the prior written determination of the President (or the Director(s) (Appointive) if he or she receives the prior written determination of the Chairperson) who shall consult with the Office of Government Ethics, that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the RTC. (See 18 U.S.C. 208.)

in conservatorship or from an assisted or assuming entity, for so long as such institution remains in conservatorship or for so long as such entity remains an assisted or assuming entity. For employees assigned to a regional or consolidated office, this prohibition is limited to institutions or entities located within the employee's region of official assignment which institutions and entities, for the purposes of this paragraph shall be deemed to include:

(1) The insured depository institution resulting from the failure of an insured depository institution and any of its wholly owned subsidiaries within the employee's region of official assignment if the assuming entity is a depository institution holding company;

(2) The assuming entity, all of its branches, and all of the wholly owned subsidiaries of the failed institution within the employee's region of official assignment if the assuming entity is an insured depository institution located in the employee's region of official assignment; and

(3) The wholly owned subsidiaries of the failed institution, which subsidiaries are located in the employee's region of official assignment if the assuming entity is a depository institution located outside the employee's region of official assignment.

The Assistant Executive Secretary (Ethics) of the FDIC, in consultation with the Executive Director RTC, may upon a 30 day notice to the employees extend these credit restrictions to other covered employees when it is deemed that the nature of the work of the RTC employee would pose a conflict of interest with these prohibited creditors. Such positions may include, but are not limited to, those in which the incumbent is responsible for making decisions or taking actions with respect to any provider of credit, or the decision or action of the employee has an economic impact on any provider of credit.

(b) An individual member of the Board of Directors (except the Comptroller of the Currency and the Director of the Office of Thrift Supervision), any other employee assigned to the Washington office and any employee in the Regional or Consolidated Office who, on behalf of the RTC, has contracted for or participated personally and substantially in any matter involving an assisted or assuming entity, insured depository institution, or other provider of credit may not, directly or indirectly, accept or become obligated on any extension of credit from such entity for so long as it remains an assisted or assuming entity or for one year following his or her official involvement in the matter with that entity.

(c) The Director of the Resolution and Operations Division, the holder of any position immediately subordinate thereto, a managing agent of an insured depository institution in conservatorship, or any other covered employee of the RTC who participates in the management of an insured depository institution in conservatorship is disqualified from participating in any matter (including any audit, visitation, or investigation) involving or from otherwise taking any action on behalf of the RTC with regard to any insured depository institution, financial institution, or person that has, either directly or indirectly, extended credit to such employee. Every other covered employee is disqualified from taking any action on behalf of the RTC with regard to any insured depository institution, financial institution, or other person that has, either directly or indirectly, extended credit to such employee in an amount in excess of $10,000. The appropriate director, in consultation with the Ethics Counselor, may also extend such disqualification to affiliates of such creditors.

(d) If the adoption of this regulation, change in marital status, commencement of employment, reassignment to another division or location, or action affecting the status of the creditor [4] results in an extension of credit prohibited by paragraphs (b) and (c) of this section, such extension of credit may be retained by the employee if it is liquidated under its original terms without renegotiation. If an otherwise prohibited extension of credit is retained in accordance with this paragraph, the employee shall be disqualified from participating in any decision, examination, audit, or other action having an impact on the creditor and report his or her retention in writing to the appropriate director and Ethics Counselor.

(e)(1) An employee, other than an employee described in paragraph (b) of this section, otherwise required to liquidate a nonconforming extension of credit under its original terms may request permission to renegotiate the loan. An employee described in paragraph (b) of this section otherwise required to liquidate a nonconforming extension of credit under its original terms may request review and concurrence by the Ethics Counselor to renegotiate such a loan. Any such request shall be made in writing to the appropriate director and Ethics Counselor, or in the case of an employee described in paragraph (b) of this section to the Ethics Counselor, stating:

(i) The purpose of the renegotiation;

(ii) The terms and conditions of the original loan;

(iii) The terms and conditions now available to the general public;

(iv) The terms and conditions now offered the employee;

(v) What action the employee has taken to move the loan to an otherwise nonprohibited creditor; and

(vi) The financial hardship, if any, denial of the request will cause.

(2) No employee may renegotiate a loan from a prohibited creditor without the prior written approval of the appropriate director and the Ethics Counselor or in the case of an employee described in paragraph (b) of this section without the prior review and concurrence by the Ethics Counselor.

(f) Notwithstanding the restrictions of this section, an employee may assume a mortgage loan made by a prohibited creditor under the following circumstances:

(1) The loan is for the employee's personal residence;

(2) The employee is unable to arrange without undue financial hardship a loan from a nonprohibited creditor;

(3) The terms of the assumption are no more favorable than those made available to the general public by the same creditor;

(4) The employee receives the prior approval of the appropriate director, who shall have consulted with the Ethics Counselor, or in the case of an employee described in paragraph (b) of this section he or she receives the prior concurrence of the Ethics Counselor; and

(5) The employee is disqualified from participating in any decision, examination, audit, or other action having an impact on the creditor.

(g)(1) An extension of credit to an employee's spouse or dependent child shall constitute an extension of credit to the employee unless:

(i) The loan is made to the spouse or dependent child entirely upon his or her own credit and without the employee's being a party to the credit instrument as co-maker, endorser, or guarantor;

(ii) The loan is supported by the spouse's or dependent child's own income or means so that neither the creditor nor the spouse nor dependent child will look to the employee, his or her income, or his or her property for the payment thereof; and

[4] Such actions include, but are not limited to, mergers, acquisitions, transactions under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) or similar actions beyond the employee's control.

(iii) The spouse or dependent child has or in the case of student loans will have the income, the ability, and the means to meet the loan obligation at maturity.

(2) Even though an extension of credit to a spouse or dependent child is, by virtue of paragraph (g)(1) of this section, not deemed to be an extension of credit to an employee, as a matter of policy the employee will be disqualified from participating in any decision, examination, audit, or other action having an impact on the creditor to the same extent as if the employee were obligated on the extension of credit.

§ 1605.17 Securities of insured depository institutions.

(a) While employed by the RTC, an employee may not purchase, own, or control, directly or indirectly, any securities of an insured depository institution or affiliate thereof, except as permitted in this section.

(b)(1) Except as provided in paragraph (b)(2) of this section, an employee (other than a member of the Board of Directors) may own or control securities of an insured depository institution or affiliate thereof whenever:

(i) Ownership or control was acquired prior to commencement of RTC employment, through a change in marital status, or through circumstances beyond the employee's control, such as inheritance, gift, or merger, acquisition or other change in corporate ownership;

(ii) The employee makes full, written disclosure on the prescribed form to the Ethics Counselor, pursuant to § 1605.25 of this part, within 30 days of commencing employment or acquiring the interest; and

(iii) The employee is disqualified from participating in any decision, examination, audit or other action having an impact on the insured depository institution or affiliate; Provided, that the Ethics Counselor, in consultation with the appropriate director, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the RTC (pursuant to § 1605.15(f) of this part).

An employee may own or control additional securities which result from a stock split, stock dividend, or the exercise of preemptive rights arising out of the ownership of such securities.

(2) The Ethics Counselor may require that an employee divest his or her interest in securities otherwise permitted under paragraph (b)(1) of this section whenever disqualification might result in a substantial impairment of the employee's ability to perform his or her RTC duties and responsibilities.

(c) An employee may have an indirect interest in securities of an insured depository institution or affiliate thereof which arises through ownership of shares (or other investment units) of publicly held holding companies, mutual funds, or investment trusts but only if:

(1) The assets of the holding company, mutual fund, or investment trust consist primarily of securities of entities other than depository institutions; and

(2) The employee does not own or control 5 percent or more of the shares (or other investment units) of the holding company, mutual fund, or investment trust.

Such an indirect interest in securities of an insured depository institution or affiliate is deemed too inconsequential to affect the integrity of the employee's services to the RTC (pursuant to § 1605.15(f) of this part).

(d)(1) Interests of an employee's spouse or dependent child shall be considered interests of the employee unless:

(i) The interest is solely the financial interest and responsibility of the spouse or dependent child;

(ii) The interest is not in any way, past or present, derived from the income, assets, or other activity of the employee; and

(iii) Any financial or economic benefit from the interest is for the spouse's or dependent child's personal use.

(2) Even though an interest of a spouse or dependent child is, by virtue of paragraph (d)(1) of this section, not deemed to be an interest of an employee, as a matter of policy the employee will be disqualified from participating in any decision, examination, audit, or other action having an impact on that interest to the same extent as if the interest were that of the employee.

§ 1605.18 Other investments.

(a) While employed by the RTC, an employee may not purchase, own, or control, directly or indirectly, any securities which are issued on behalf of the RTC to finance holdings of assets acquired in the resolution or liquidation of insured depository institutions by the RTC or to fund the operations of any bridge bank or other institution organized by the RTC under sections 21A(b)(11)(A) (iv) or (v) of the Federal Home Loan Bank Act, as added by section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(b) While employed by the RTC, an employee may not purchase securities of, or otherwise invest in, any open- or closed-end fund primarily established to acquire insured depository institutions offered for sale by the RTC.

(c) While employed by the RTC, an employee may not knowingly acquire, directly or indirectly, any financial interest which conflicts, or appears to conflict, with his or her official duties and responsibilities.

(d)(1) Except as provided in paragraph (d)(2) of this section, an employee may own or control investments described in paragraph (c) of this section whenever:

(i) Ownership or control was acquired prior to commencement of RTC employment, through a change in marital status, or through circumstances beyond the employee's control, such as inheritance, gift, or merger, acquisition or other change in corporate ownership;

(ii) The employee makes full, written disclosure on the prescribed form to the Ethics Counselor, pursuant to § 1605.26 of this part, within 30 days of commencing employment or acquiring the interest; and

(iii) The employee is disqualified from participating in any decision or other action which could have a direct and predictable impact on the employee's financial interest; Provided, that the Ethics Counselor, in consultation with the appropriate director and in compliance with rules to be promulgated by the U.S. Office of Government Ethics, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the RTC.

(2) The Ethics Counselor may require that an employee divest his or her ownership or control of investments otherwise permitted by paragraph (d)(1) of this section whenever disqualification might result in a substantial impairment of the employee's ability to perform his or her RTC duties and responsibilities.

(e)(1) An employee may have an indirect interest in an otherwise prohibited investment which arises through ownership of shares (or other investment units) of a publicly held company, mutual fund, or investment trust which has a broadly diversified portfolio not specializing in any particular industry and which is widely held and is not under the employee's control or a limited partnership interest in a large public partnership (i.e., one which has at least 39 partnership interests) and less than 25% of the gross revenues of the limited partnership derive from business with the RTC (pursuant to § 1605.15(f) of this part).

(2) The employee is disqualified from participating in any decision or other action having a direct and predictable

impact on the employee's financial interest; Provided, that the Ethics Counselor, in consultation with the appropriate director and in compliance with rules to be promulgated by the U.S. Office of Government Ethics, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the RTC.

(f)(1) Interests of an employee's spouse or dependent child shall be considered interests of the employee unless:

(i) The interest is solely the financial interest and responsibility of the spouse or dependent child;

(ii) The interest is not in any way, past or present, derived from the income, assets, or other activity of the employee; and

(iii) Any financial or economic benefit from the interest is for the spouse's or dependent child's personal use.

(2) Even though an interest of a spouse or dependent child is, by virtue of paragraph (f)(1) of this section, not deemed to be an interest of an employee, as a matter of policy the employee will be disqualified from participating in any decision or other action having an impact on that interest to the same extent as if the interest were that of the employee.

§ 1605.19 Purchase of assets of institutions in conservatorship or receivership.

(a) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which the RTC or the FDIC manages as conservator of an insured depository institution or holds in its capacity as receiver, liquidator, or liquidating agent of the assets of a insured depository institution, regardless of how the property is sold.

(b) An employee who is involved in the disposition of conservatorship or receivership assets shall disqualify himself or herself from participation in the disposition of such assets when the employee becomes aware that any relative, or any organization or partnership with which the employee, the employee's spouse or dependent child is associated, has submitted a bid for the purchase of such assets. The employee shall advise his or her immediate supervisor and the Ethics Counselor in writing of the self-disqualification.

(c) An employee shall not, directly or indirectly, use or release to persons outside the RTC confidential information regarding the sale or disposition of assets except as mandated by the employee's official responsibility to liquidate such assets and only as prescribed in guidelines applicable to such sale or disposition.

§ 1605.20 Purchase of RTC property.

(a) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which the RTC holds in its corporate capacity unless:

(1) The property has been declared excess property and is sold in accordance with standards and procedures prescribed by the Director of the FDIC's Division of Accounting and Corporate Services; and

(2) The property is sold by means, determined by the Director of the FDIC's Division of Accounting and Corporate Services, which assure that the selling price is the property's fair market value.

(b) In no case shall an employee, the employee's spouse or dependent child, or members of the employee's immediate household directly or indirectly purchase any property from the RTC if:

(1) The employee is employed in the Facilities Management and Operations Section of the FDIC's Division of Accounting and Corporate Services or is directly involved in the disposition of excess property;

(2) The property was last under the control or supervisory responsibility of the employee (except in the case of property sold by sealed bid or at public auction);

(3) He or she relied upon information regarding the property obtained by the employee in the course of his or her employment with the RTC (other than knowledge of the proposed sale of the property), which is not available to the general public; or

(4) The employee is the head of the last known office using the property (except in the case of property sold by sealed bid or at public auction).

§ 1605.21 Purchase of assets of insured depository institutions.

An employee, the employee's spouse or dependent child, or a member of the employee's immediate household shall not, directly or indirectly, purchase an asset (for example, real property, automobiles, trucks, mobile homes, or repossessed goods) of an insured depository institution unless such asset is sold at public auction, is offered to the general public at the same price, or is sold by other means that assure that the selling price is the asset's fair market value. In no event shall an employee, an employee's spouse or dependent child, or a member of the employee's immediate household purchase an asset from any insured depository institution in reliance on information obtained in the course of the employee's performance of his or her official duties or from any other source not available to the general public. Employees have a responsibility to consult with the Ethics Counselor as to the propriety of the proposed purchase.

§ 1605.22 Providing goods or services to the RTC.

An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, direct or indirectly, provide any goods or services for compensation to the RTC either in its corporate capacity or in its capacity or conservator, receiver, liquidator, or liquidating agent of the assets of an insured depository institution unless the Executive Director of the RTC determines, in accordance with the provisions of § 1605.23(d) and (e) of this part and standards and procedures approved by the Board of Directors, that it is in the best interest of the RTC to acquire goods or services from such a person. For the purpose of this section, the term "services" does not include services as required by the employee's position with the RTC.

§ 1605.23 Outside employment and other activity.

(a) An employee shall not engage in employment or other activity outside the scope of his or her RTC employment which is not compatible with the full and proper discharge of the employee's duties and responsibilities to the RTC. Employment or activity which is not compatible with the employee's duties and responsibilities to the RTC includes, but is not limited to, that which results in, or creates an appearance of, a conflict of interest or impairs the employee's physical or mental capacity to perform the duties and responsibilities of his or her position with the RTC. Such employment or activity may involve:

(1) Service, with or without compensation, as an organizer, incorporator, director, officer, trustee, or representative of, or advisor or consultant to, or in any other capacity with, any insured depository institution, including a credit union, except the FDIC Employees' Federal Credit Union;

(2) Service, with or without compensation, in any capacity with an investment advisor, investment company, investment fund, mutual fund, insurance company, stockbroker, underwriter, or any other person

engaged in providing financial services; or

(3) Active participation in or conduct of a business dealing with or related to real estate including, but not limited to, real estate brokerage, management and sales, property insurance, and appraisal services.

(b) An employee shall not engage in outside employment or other activity, with or without compensation, with any person or entity doing business with the RTC.

(c) An employee shall not accept any money or anything of monetary value from a private source as compensation for the employee's service to the RTC. (See 18 U.S.C. 209.)

(d) An employee shall not, directly or indirectly, receive compensation for representational services rendered by himself or herself or another before an agency of the Federal or District of Columbia Government on matters in which the United States has an interest. (See 18 U.S.C. 203.)

(e) Except as provided in paragraph (f) of this section, an employee shall not represent anyone before an agency or court of the Federal or District of Columbia Government, with or without compensation, in matters in which the United States has an interest, other than in the proper discharge of the employee's official duties. (See 18 U.S.C. 205.)

(f) An employee must obtain the prior written approval of the Ethics Counselor in order to represent a parent, spouse, child, or person or estate for which he or she serves as a guardian, executor, administrator, trustee, or personal fiduciary, with or without compensation. (See 18 U.S.C. 205.)

(g) This section does not preclude an employee from participating in the activities of charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organizations, so long as such participation does not violate § 1605.16 of this part of 18 U.S.C. 203 or 205 national or state political parties, if not prohibited by law.

(h) Any employee who engages in, or intends to engage in, outside employment or activity must obtain the prior written approval of the appropriate director, who shall consult with the Ethics Counselor as to whether such employment or activity is compatible with the purposes of this part.

§ 1605.24 Employment of family members by persons other than the RTC.

(a) In order to avoid a conflict of interest or the appearance of a conflict, a covered employee shall report to the appropriate director within 30 days the employment of the employee's spouse, child, parent, brother, sister, or a member of the employee's immediate household by:

(1) An insured depository institution or its affiliate;

(2) A firm or business with which, to the employee's knowledge, the RTC has a contractual or other business or financial relationship; or

(3) A firm or business which, to the employee's knowledge, is seeking a business or contractual relationship with the RTC.

(b) Generally, a covered employee will not be assigned to any matter involving the family member's employer unless the appropriate director, in consultation with the Ethics Counselor, makes the prior determination that the nature of the family member's employment makes it unlikely that the employee's services to the RTC will be affected by participation in the matter. In making determinations under this section, significant weight shall be given to the policy-making character of the family member's position. Under most circumstances, positions which are clerical or lacking policy-making character would not require disqualification.

Subpart D—Reports of Interest in Insured Depository Institution Securities, Interest in RTC Decision, and Employment Upon Resignation; Statements of Employment and Financial Interests; Financial Disclosure Reports

§ 1605.25 Report of interest in insured depository institution securities.

All employees must report, on the prescribed form, direct or indirect ownership of securities of insured depository institutions within 30 days of commencement of employment, and within 30 days of acquiring the interest if acquired subsequent to employment in accordance with § 1605.17 of this part, or if the interest was previously acquired, within 30 days of the entity's becoming an insured depository institution.

§ 1605.26 Report of interest in RTC decision.

Except for interests reported in accordance with §§ 1605.17 and 1605.25 of this part, an employee with a financial interest (other than a deposit or indebtedness) in an insured depository institution or other entity that may be affected by his or her participation in an RTC decision must report that interest to the Ethics Counselor on a prescribed form. Reports are to be made within 30 days of commencement of employment or acquisition of the interest if acquired subsequent to employment or if the interest was previously acquired, within 30 days of the insured depository institution's or other entity's becoming subject to an RTC decision. Reports filed under this section shall be treated as confidential. Information in a report shall be disclosed only as necessary to carry out the purposes of this part or as the Chairperson may determine for good cause shown.

§ 1605.27 Report of employment upon resignation.

Each covered employee shall report to the Ethics Counselor on a prescribed form his or her resignation to accept employment in the private sector. Such report shall include pertinent information regarding the prospective employment and shall be made as soon as possible but in no event less than two weeks prior to the effective date of resignation.

§ 1605.28 Statement of employment and financial interests.

(a) *Employees required to file.* Unless they file statements pursuant to § 1605.29 of this part, the following employees shall be deemed covered employees for the purpose of filing statements of employment and financial interests pursuant to this section:

(1) Assistants to assistants or deputies to the Board of Directors or to individual Board members (except persons serving in such capacities when the individual Board members or the Board of Directors are acting as employees of the FDIC or unless otherwise subject to the regulations of other federal agencies);

(2) Holder(s) of the position(s) immediately subordinate to the Executive Director of the RTC, or the director of a division or office;

(3) Branch or comparable office heads;

(4) Employees at or above the grade 5 level in job series 1160, 301, and 341;

(5) Employees serving as financial economists in job series 110;

(6) Employees at or above the grade 9 level who evaluate, recommend, purchase or contract for equipment, materials, and services;

(7) Persons employed by the RTC as attorneys;

(8) Internal auditors and investigators at or above the grade 5 level;

(9) Voting members and designees appointed to any RTC standing committee;

(10) The Alternate Ethics Counselor and Deputy Ethics Counselors; and

(11) The holders of any other positions determined by the Ethics Counselor to

require the incumbents to report employment and financial interests in order to carry out the purposes of law, executive order, this part, or other RTC regulation; Provided, that reporting by holders of such positions below the grade 13 level will be subject to the prior concurrence of the U.S. Office of Government Ethics. Such positions may include, but are not limited to, those the incumbents of which are responsible for making decisions or taking actions with respect to contracting or procurement, administering or monitoring grants or subsidies, regulating or auditing a private or non-federal enterprise, or other activities where the decision or action has an economic impact on any insured depository institution or other enterprise.

(b) *Submission of statements.* (1) Covered employees shall annually file statements of employment and financial interests with information as of December 31. Covered employees who have commenced employment within 90 days of December 31 need not submit another statement for such reporting period.

(2) The Ethics Counselor shall notify covered employees of the obligation to file annual statements and provide a copy of the prescribed reporting form no later than January 30 of each year with instructions that statements are to be submitted in accordance with paragraph (b)(5) of this section not later than February 28.

(3) Covered employees commencing employment in or reassigned or promoted to positions, the incumbents of which must file statements in accordance with this section, shall file statements within 30 days after commencement of employment, reassignment, or promotion.

(4) Notwithstanding any other provision of this section, the filing of a statement may be required prior to employment in, or reassignment or promotion to, executive level positions and certain other senior positions.

(5) Statements required under this section shall be submitted to the appropriate reviewing official.

(c) *Financial interests of spouse and dependent child.* For the purpose of this section, a financial interest of the covered employee's spouse or dependent child is considered an interest of the covered employee unless:

(1) The interest is solely the financial interest and responsibility of the spouse or the dependent child, and the covered employee has no knowledge of it;

(2) The interest is not in any way, past or present, derived from the income, assets, or activities of the covered employee; and

(3) The covered employee neither derives, nor expects to derive, any financial or economic benefit from the interest.

(d) *Information not known by covered employee.* If any information required to be included on a statement of employment and financial interests, including holdings placed in trust, is not known to a covered employee but is known to another person, the covered employee shall request that other person to submit information on his or her behalf.

(e) *Excepted information.* This section does not require a covered employee to submit on a statement of employment and financial interests any information relating to the covered employee's connection with, or interest in, a professional society, or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the government are deemed business enterprises and are required to be included in a covered employee's statement of employment and financial interests.

(f) *Confidentiality of statements.* Statements of employment and financial interests shall be held in confidence. Statements shall be received, reviewed, and retained in the office of the reviewing official, who shall be responsible for maintaining the statements in confidence. The secretary of the reviewing official shall have such access as necessary and then only to carry out the purposes of the review. The Ethics Counselor shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purposes of this part. Information in a statement will not otherwise be disclosed except as the Chairperson or the Director of the U.S. Office of Government Ethics may determine for good cause shown.

(g) *Review of statements.* (1) Annual statements submitted under this section will be reviewed by the appropriate reviewing official no later than two months following the filing of the statements.

(2) Whenever a statement or other information indicates a possible conflict between the interest of a covered employee and the performance of his or her service to the RTC:

(i) The reviewing official shall investigate the matter and allow the covered employee a reasonable opportunity, orally and in writing, to explain why he or she does not believe a conflict or appearance of a conflict exists; and

(ii) The Ethics Counselor shall attempt to resolve the matter. If the matter cannot be resolved within 60 days, the information concerning the conflict or the appearance of a conflict shall be reported to the Chairperson for resolution.

(h) *Effect on other reporting requirements.* The statements of employment and financial interests required of covered employees are in addition to, and not in substitution for or in derogation of, any similar requirement imposed by law or regulation.

§ 1605.29 Financial Disclosure Reports under the Ethics in Government Act of 1978.

Individual Board members (except the Comptroller of the Currency and the Director of the Office of Thrift Supervision), employees at or above the RTC's Executive Level I, and employees whose positions are excepted from competitive service by reason of being of a confidential or policy-making character (unless otherwise excluded by the U.S. Office of Government Ethics) must file:

(a) Financial Disclosure Reports (SF 278) in accordance with the requirements of the Ethics in Government Act of 1978 and regulations of the U.S. Office of Government Ethics, 5 CFR part 2634; and

(b) Confidential Reports of Indebtedness reporting all indebtedness to insured depository institutions and any affiliates thereof, not otherwise reportable in accordance with the requirements of the Ethics in Government Act of 1978. Such statements shall be filed with the Ethics Counselor on or before May 15 for the preceding calendar year ended December 31.

Subpart E—Limitations on Post Employment Activities of Former Employees, Including Special Government Employees

§ 1605.30 Limitations on representation.

(a) No former employee or special government employee, after terminating government employment, shall knowingly act as agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to infuence, make any oral or written communication on behalf of any other person other than the United States, or any agency thereof to the United States, in connection with any

particular government matter involving a specific party, and in which such employee or special government employee participated personally and substantially as an employee or special government employee through decision, approval, disapproval, recommendation, advice, investigation, or otherwise. (See 18 U.S.C. 207(a) and 5 CFR 2637.201.)

(b) No former employee or special government employee, within two years after termination of employment with the RTC, shall knowingly act as agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States, or an agency thereof to the United States, in connection with any particular government matter involving a specific party, if such matter was actually pending under the employee's responsibility as an officer or employee within a period of one year prior to the termination of such responsibility. (See 18 U.S.C. 207(b)(i) and 5 CFR 2637.202.)

(c) No former senior employee, within two years after termination of employment with the RTC, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person, except the United States, by personal presence at any formal or informal appearance, before the United States, in connection with any particular government matter involving a specific party, and in which matter he or she participated personally and substantially while an employee. (See 18 U.S.C. 207(b)(ii) and 5 CFR 2637.203.)

(d) The provisions of paragraphs (a) (b) and (c) of this section shall not apply to the participation of a former employee or special government employee, other than those persons described in paragraph (e) of this section, in matters of general application, such as rulemaking, proposed legislation or regulations, and the formulation of general policy standards or objectives but shall apply to rulemaking having a direct and predictable effect on a certain party or group of parties. (See 5 CFR 2637.201.)

(e) For a period of one year after termination of employment with the RTC, no former senior employee (other than a special government employee who serves for fewer than sixty (60) days in a calendar year) shall knowingly act as an agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States to the RTC or any of its officers or employees, in connection with any particular government matter, whether or not involving a specific party, which is pending before the RTC, or in which the RTC has a direct and substantial interest. (See 18 U.S.C. 207(c) and 5 CFR 2637.204.)

§ 1605.31 Limitations on aiding or advising.

(a) For a period of one year after termination of employment with the RTC, no former employee, including a former senior employee, shall knowingly act as agent or attorney for, or otherwise aid or advise any other person (except the United States) concerning any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, or other particular matter in which, to the former employee's knowledge, the United States is a party or has a direct and substantial interest; that involves the same specific party or parties; and in which matter he or she participated personally and substantially while an employee.

(b) For purposes of paragraph (a) of this section, the limitations on aiding and assisting shall only apply to particular matters about which the former employee had access to information which is exempt from disclosure under 5 U.S.C. 552, so designated as exempt by the RTC or the Oversight Board, the basis for the aid or advice.

§ 1605.32 Consultation as to propriety of appearance before the RTC.

Any former employee who wishes to appear before the RTC on behalf of any person other than the United States, or an agency thereof, at any time after termination of employment with the RTC, may consult the Ethics Counselor as to the propriety of such appearance.

§1605.33 Suspension of appearance privilege.

Any former employee or special government employee who knowingly fails to comply with the provisions of this subpart may be prohibited from making an appearance before, or an oral or written communication with, the RTC or the Oversight Board for such period of time as provided in procedures to be adopted by the RTC and the Oversight Board.

Subpart F—Ethical and Other Conduct and Responsibilities of Special Government Employees

§ 1605.34 General.

(a) Special government employees are those serving the RTC, by performing temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days.[5]

(b) The rules of conduct contained in subparts A, B, C, D, and E of this part shall also apply to special government employees insofar as their employment with the RTC is concerned except in the instances discussed in this subpart F. However, the prohibition in § 1605.14(e) of this part, concerning active participation in political management or campaigns (5 U.S.C. 7321 *et seq.*, the Hatch Act), only applies to special government employees on days that they serve the RTC. Further, the prohibition in § 1605.23 of this part, concerning outside employment, shall not apply to members of the National or Regional Advisory Boards.

§ 1605.35 Applicability of 18 U.S.C. 203 and 205.

(a) The prohibitions in 18 U.S.C. 203 and 205 applicable to special government employees are less stringent than those which affect regular employees. These two sections in general operate to preclude a regular government employee, except in the discharge of his or her official duties, from representing another person before a department, agency, or court, whether with or without compensation, in a matter in which the United States is a party or has a direct and substantial interest. However, the two sections impose only the following major restrictions upon a special government employee:

(1) He or she may not, except in the discharge of his or her official duties, represent anyone else (or receive compensation from another's representation) before a court or government agency in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he or she at any time participated personally and substantially in the course of his or her government employment. What constitutes personal and substantial participation in a matter is discussed in § 1605.37(b) of this part.

[5] All members of the National and Regional Advisory Boards are considered to be special government employees for purposes of this part.

(2) He or she may not, except in the discharge of his or her official duties, represent anyone else (or receive compensation from another's representation) in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and which is pending before the agency he or she serves. However, this restraint is not applicable if he or she has served the agency no more than 60 days during the past 365 days. He or she is bound by the restraint, if applicable, regardless of whether the matter is one in which he or she has ever participated personally and substantially.

(b) These restrictions prohibit both paid and unpaid representation and apply to a special government employee on the days when he or she does not serve the government as well as on the days when he or she does.

(c) An employee who undertakes service with the RTC and another federal entity, including the Oversight Board, shall inform each of his or her arrangements with the other.

(d) There may be situations where a special government employee has a responsible position with his or her regular employer which requires him or her to participate personally in a matter before the RTC or the Oversight Board. In such a situation, the special government employee should participate in the matter for his or her regular employer only with the knowledge of the appropriate director, after consultation with the Ethics Counselor. However, an independent member of the Oversight Board or a member of the National or Regional Advisory Board may not represent his or her regular employer in, an must be fully recused from, any agency deliberations or actions concerning any contract or other particular matter such employer has before or involving the Oversight Board or the RTC and must also be prohibited from sharing in any fees or profits directly attributable to such contracts or other particular matter. Thus, employers of persons who also serve as independent members of the Oversight Board or the National or Regional Advisory Boards are not barred from contracting with the RTC or the Oversight Board provided that such members are in full compliance with this paragraph.

(e) Section 205 of title 18 of the U.S. Code permits a special government employee to represent, with or without compensation, a parent, spouse, child, or another person or an estate he or she serves as a fiduciary, but only if he or she has the approval of the official responsible for appointment to his or her position and the matter involved is neither one in which he or she has participated personally or substantially nor one under his or her official responsibility. What constitutes personal and substantial participation in a matter is discussed in § 1605.37(b) of this part. The term "official responsibility" is defined in 18 U.S.C. 202 to mean the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct action in the RTC or the Oversight Board.

§ 1605.36 Applicability of 18 U.S.C. 207.

(a) Section 207 of title 18 of the U.S. Code applies to individuals who have left government service, including former special government employees. It prevents a former employee or special government employee from representing another person in connection with certain matters (or making oral or written communications, with the intent to influence, to the government or a court) in which he or she participated personally and substantially on behalf of the government. The matters are those involving a specific party or parties in which the United States is also a party or has a direct and substantial interest. What constitutes personal and substantial participation in a matter is duscussed in § 1605.37(b) of this part. In addition, section 207 of title 18 of the U.S. Code prevents a former employee, for a period of two years after his or her responsibility for a matter has ceased, from representing another person (or making oral or written communications with the intent to influence) in such matter before a court, department, or agency if the matter was actually pending within the area of his or her official responsibility at any time in the last year prior to termination of the employee's responsibility.

(b) A special government employee who serves 61 days or more in a given calendar year in a position designated as a senior employee position under the Ethics in Government Act of 1978 may not represent anyone other than the United States before the employee's former agency in any particular matter (whether or not a specific party or parties are involved) and may not make oral or written communications, with intent to influence, to that agency for a period of one year after his or her employment has ceased. For purposes of this restriction, the term "agency" includes both the RTC and the Oversight Board but does not include the Resolution Funding Corporation or the Federal Housing Finance Board.

§ 1605.37 Applicability of 18 U.S.C. 208.

(a) Section 208 of title 18 of the U.S. Code bears on the activities of government personnel, including special government employees, in the course of their official duties. In general, it prevents an employee or special government employee from participating personally and substantially as a government officer or employee in a particular matter in which, to his or her knowledge, the employee, his or her spouse, minor child, partner, profit or nonprofit organization in which the employee is serving as officer, director, trustee, partner or employee, or any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment, has a financial interest. Waivers may be granted in consultation with the U.S. Office of Government Ethics, subject to the provisions of 18 U.S.C. 208(b)(1). Until such waivers are issued and waivers thereunder granted, special government employees are disqualified from participating in any matter in which such a financial interest exists.

(b) For the purposes of 18 U.S.C. 208, the phrase "participates personally and substantially in a particular matter" applies to participation through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter. Accordingly, a special government employee should in general be disqualified from participating as such in a matter of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by 18 U.S.C. 208.

§ 1605.38 Advice on rules of conduct and conflicts of interest statutes.

Any special government employee having any doubt as to the propriety of any conduct failing within the conflicts of interest statutes or regulations should confer with the Ethics Counselor. Assistance in interpreting the conflicts of interest statutes, these regulations, and any other instructions involving conduct and conflicts of interest will also be provided by the Ethics Counselor to any special government employee, prospective government employee, and their appointing officials and supervisors desiring it.

§ 1605.39 Use of RTC employment.

A special government employee shall not use his or her RTC employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 1605.40 Use of inside information.

(a) A special government employee shall not use any inside information obtained as a result of his or her RTC employment for private gain for himself or herself or another person, either by direct action on his or her part or by counsel, recommendation, or suggestion to another person, particularly one with whom he or she has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under RTC authority which has not become part of the body of public information.

(b) The provisions of § 1605.11(a) through (d) of this part with regard to employees shall be applicable to special government employees.

§ 1605.41 Coercion.

A special government employee shall not use his or her RTC employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 1605.42 Gifts, entertainment, favors, and loans.

(a) Except as provided in paragraph (b) of this section, a special government employee, while so employed or in connection with his or her employment, shall not receive or solicit from a person having business with the RTC anything of value as a gift, gratuity, loan, entertainment, or favor for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

(b) The exemptions of § 1605.8(b) of this part with regard to employees shall be applicable to special government employees.

§ 1605.43 Statements of employment and financial interests.

(a) Except as provided in paragraphs (b) and (c) of this section, each special government employee shall submit a statement of employment and financial interests to the Ethics Counselor which reports:

(1) All other employment; and

(2) The financial interests of the special government employee which the RTC determines are relevant in the light of the duties he or she is to perform.

(b) The Ethics Counselor may waive the requirement in paragraph (a) of this section for the submission of a statement of employment and financial interests in the case of a special government employee who is not a consultant or an expert when the Ethics Counselor finds that the duties of the position held by that special government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the RTC. For the purpose of this paragraph, "consultant" and "expert" have the meanings given those terms by chapter 304 of the Federal Personnel Manual, but do not include a physician, dentist, or medical specialist whose services are procured to provide care and service to patients. Special government employees who are relieved of the requirement of filing a statement include, but are not limited to: summer personnel, student interns, and individuals paid out of "Impress Funds" to assist in insured depository institution liquidations.

(c) Special government employees at or above Executive Level I shall file Financial Disclosure Reports (SF 278) in accordance with the requirements of the Ethics in Government Act of 1978 and regulations of the U.S. Office of Government Ethics, 5 CFR part 2634.

(d) A statement of employment and financial interests required to be filed under this section shall be filed not later then the time of employment of the special government employee. Each special government employee shall keep his or her statement current throughout his or her employment with the RTC by the submission of amended or annual statements as required.

(e) The provisions of § 1605.27(c) through (h) of this part shall apply to statements filed under this section.

Subpart G—Competence, Experience, Integrity, and Fitness of Resolution Trust Corporation Employees

§ 1605.44 Minimum competence, experience, integrity, and fitness requirements for Resolution Trust Corporation employees.

(a) The RTC is prohibited by statute from employing or retaining any employee who does not meet the minimum competence, experience, integrity and fitness requirements.

(b) No employee shall remain employed by the RTC or otherwise perform any service for or on behalf of the RTC who has:

(1) Been convicted of a felony;

(2) Been removed from, or prohibited from participation in the affairs of any insured depository institution pursuant to any final enforcement action by any appropriate Federal banking agency;

(3) Demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions; or

(4) Caused a substantial loss to Federal deposit insurance funds.

(c) Any employee who fails to meet the minimum standards as provided in § 1605.44(b) of this part shall report such facts in writing to the Ethics Counselor immediately.

By order of the Board of Directors.

Dated at Washington, DC this 5th day of February 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90-3429 Filed 2-13-90; 8:45 am]

BILLING CODE 6714-01-M

federal register

Wednesday
February 14, 1990

Part VII

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To The Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report 19 deferrals of budget authority now totalling $2,193,850,000.

The deferrals affect programs of the Department of Defense. The details of these deferrals are contained in the attached report.

Dated: February 6, 1990.

George Bush,

THE WHITE HOUSE.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Department of Defense, Military:	
D90-10	Aircraft Procurement, Army	16,000
D90-11	Procurement of Ammunition, Army	310,000
D90-12	Procurement of Ammunition, Army	90,000
D90-13	Other Procurement, Army	11,000
D90-14	Aircraft Procurement, Navy	200,000
D90-15	Weapons Procurement, Navy	13,900
D90-16	Shipbuilding and Conversion, Navy	592,398
D90-17	Shipbuilding and Conversion, Navy	324,800
D90-18	Aircraft Procurement, Air Force	181,700
D90-19	Missile Procurement, Air Force	131,000
D90-20	Other Procurement, Air Force	70,000
D90-21	National Guard and Reserve Equipment, Defense	40,900
D90-22	Research, Development, Test and Evaluation, Air Force	100,000
D90-23	Research, Development, Test and Evaluation, Defense Agencies	21,000
D90-24	Military Construction, Army	3,200
D90-25	Military Construction, Navy	16,150
D90-26	Military Construction, Army National Guard	18,301
D90-27	Military Construction, Air National Guard	36,841
D90-28	Military Construction, Army Reserve	16,660
	Total, Deferrals	2,193,850

SUMMARY OF SPECIAL MESSAGES
FOR FY 1990
(in thousands of dollars)

	RESCISSIONS	DEFFERALS*
Third special message:		
New items	---	2,193,850
Revisions to previous special messages	---	---
Effects of third special message	---	2,193,850
Amounts from previous special messages that are changed by this message (changes noted above)	---	---
Subtotal, rescissions and deferrals	---	2,193,850
Amounts from previous special messages that are not changed by this message	---	8,448,410
Total amount proposed to date in all special messages	---	10,642,260

* Detail does not add to total due to rounding.

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Deferral No: D90-10

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Defense **Bureau:** Department of the Army **Appropriation title and symbol:** Aircraft Procurement, Army 210/22031	**New budget authority.....** $ 3,744,080,000 (P.L. 101-167) **Other budgetary resources.** ____ **Total budgetary resources.** 3,744,080,000 **Amount to be deferred:** **Part of year.....** $ ____ **Entire year.....** 16,000,000
OMB identification code: 21-2031-0-1-051 **Grant program:** [ ] Yes [X] No	**Legal authority** (in addition to sec. 1013): [X] Antideficiency Act [ ] Other ____
Type of account or fund: [ ] Annual [X] Multiple-year Sept. 30, 1992 (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other ____

Justification: This appropriation provides for the acquisition of aircraft, modification of in-service aircraft, ground support equipment, components and repair parts, related training devices and production base support. These funds were programmed to upgrade avionics and computer systems on the OV-1D Army air reconnaissance aircraft. This proposal reflects changes in requirements in view of promising developments in the Soviet Union and Eastern Europe.

Estimated Program Effect: The Department of the Army's ability to successfully accomplish its mission would not be affected by this deferral proposal.

Outlay Effect: (in thousands of dollars)

1990 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
485,092	483,012	-2,080	-4,480	+2,720	+1,760	+1,280	+464

Deferral No: D90-11

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Defense
Bureau:
Department of the Army
Appropriation title and symbol:
Procurement of Ammunition, Army
219/12034
218/02034

OMB identification code:
21-2034-0-1-051
Grant program:
☐ Yes ☒ No

Type of account or fund:
☐ Annual
☒ Multiple-year Sept. 30, 1991 / Sept. 30, 1990 (expiration date)
☐ No-Year

New budget authority..... $
(P.L.101-165)
Other budgetary resources. 467,183,798
Total budgetary resources. 467,183,798

Amount to be deferred:
Part of year..... $ 237,700,000
Entire year..... 72,300,000

Legal authority (in addition to sec. 1013):
☒ Antideficiency Act
☐ Other

Type of budget authority:
☒ Appropriation
☐ Contract authority
☐ Other

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Amount Reported Deferred
Procurement of Ammunition, Army..	219/12034	21-2034-0-1-051	$ 72,300,000
Procurement of Ammunition, Army..	218/02034	21-2034-0-1-051	237,700,000
			310,000,000

Justification: This appropriation provides for the procurement, production and modification of ammunition, specialized equipment, training devices and expansion of facilities. These funds were provided for the design and construction of an RDX explosive production facility at the Louisiana Army Ammunition Plant. This proposal reflects changes in requirements in view of

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promising developments in the Soviet Union and Eastern Europe. As a result of these changes the Department is in the process of conducting a review of all ammunition production facilities, including this RDX facility, to determine future requirements.

Estimated Program Effect:: The Department of the Army's ability to successfully accomplish its mission would not be affected by this deferral proposal.

Outlay Effect: (in thousands of dollars)

1990 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
Account 218/02034							
725,283	628,064	-97,219	+73,687	+7,131	+78,203	-4,754	+26,147
Account 219/12034							
29,011	22,865	-6,146	-723	+11,568	+18,798	-4,410	+7,953

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Deferral No: D90-12

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Defense
Bureau:
Department of the Army
Appropriation title and symbol:
Procurement of Ammunition, Army
210/22034

OMB identification code:
21-2034-0-1-051
Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[X] Multiple-year Sept. 30, 1992 (expiration date)
[ ] No-Year

New budget authority..... $ 2,011,243,000
(P.L.101-165)
Other budgetary resources. _____
Total budgetary resources. 2,011,243,000

Amount to be deferred:
Part of year..... $_____
Entire year..... 90,000,000

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Justification: This appropriation provides for the procurement, production and modification of ammunition, specialized equipment and training devices and expansion of facilities. These funds were provided for additional M483 dual purpose improved conventional munition 155MM artillery projectiles. This proposal reflects changes in requirements in view of promising developments in the Soviet Union and Eastern Europe.

Estimated Program Effect: The Department of the Army's ability to successfully accomplish its mission would not be affected by this deferral proposal.

Outlay Effect: (in thousands of dollars)

1990 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
679,678	649,078	-30,600	+18,000	-20,700	+35,100	-11,700	+6,210

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Deferral No: D90-13

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:

Department of Defense

Bureau:
Department of the Army

Appropriation title and symbol:

Other Procurement, Army

210/22035

OMB identification code:

21-2035-0-1-051

Grant program:
☐ Yes ☒ No

Type of account or fund:

☐ Annual

☒ Multiple-year Sept. 30, 1992
(expiration date)

☐ No-Year

New budget authority..... $ 3,666,488,000
(P.L.101-165)
Other budgetary resources. _____

Total budgetary resources. 3,666,488,000

Amount to be deferred:
Part of year..... $_____

Entire year..... 11,000,000

Legal authority (in addition to sec. 1013):
☒ Antideficiency Act
☐ Other _____

Type of budget authority:
☒ Appropriation
☐ Contract authority
☐ Other _____

Justification: This appropriation provides for the acquisition of tactical and commercial nontracked vehicles, all types of communications and electronics equipment, other suppport equipment, and spare parts. These funds were programmed to procure equipment for communication above the Corps level. This proposal reflects changes in requirements in view of promising developments in the Soviet Union and Eastern Europe.

Estimated Program Effect: The Department of the Army's ability to successfully accomplish its mission would not be affected by this deferral proposal.

Outlay Effect: (in thousands of dollars)

1990 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
361,848	360,748	-1,100	-2,530	+550	+1,265	+990	+352

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Deferral No: D90-14

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Defense
Bureau:
Department of the Navy
Appropriation title and symbol:
Aircraft Procurement, Navy
179/11506

OMB identification code:
17-1506-0-1-051
Grant program:
☐ Yes ☒ No

Type of account or fund:
☐ Annual
☒ Multiple-year Sept. 30, 1991 (expiration date)
☐ No-Year

New budget authority..... $
(P.L.101-165)
Other budgetary resources. 1,383,008,139
Total budgetary resources. 1,383,008,139

Amount to be deferred:
Part of year..... $
Entire year..... 200,000,000

Legal authority (in addition to sec. 1013):
☒ Antideficiency Act
☐ Other

Type of budget authority:
☒ Appropriation
☐ Contract authority
☐ Other

Justification: This appropriation provides for the construction, procurement, production and modification of aircraft, equipment, including ordnance, and spare parts. These funds were provided for procurement of long lead production items in support of the V-22. The Amended FY 1990-1991 President's Budget proposed termination of the V-22 program based on the availability of alternative aircraft (CH-53Es and CH-60s) that could perform the Marine amphibious lift mission for less cost. Appropriations for V-22 procurement were not included in the 1990 Defense Appropriations Act. Therefore, as an efficiency measure, a stop-work order was issued in December 1989 to discontinue efforts under the FY 1989 advance acquisition contract. If these funds were not deferred, aircraft components would continue to be procured that could not be used for any other aircraft program and that are unnecessary for the completion of the development effort. As a result, these funds are deferred as a contingency against incurring additional unnecessary sunk costs.

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Estimated Program Effect: The Department of the Navy's ability to successfully accomplish its mission would not be affected by this deferral proposal.

Outlay Effect: (in thousands of dollars)

1990 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
207,451	141,251	-66,000	-36,000	+42,800	+56,200	+19,400	+7,800

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Deferral No: D90-15

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:

Department of Defense
Bureau:
Department of the Navy
Appropriation title and symbol:

Weapons Procurement, Navy

170/21507

OMB identification code:

17-1507-0-1-051
Grant program:
☐ Yes ☒ No

Type of account or fund:

☐ Annual

☒ Multiple-year Sept. 30, 1992 (expiration date)

☐ No-Year

New budget authority..... $ 5,386,380,000
(P.L.101-165)
Other budgetary resources. ____

Total budgetary resources. 5,386,380,000

Amount to be deferred:
Part of year..... $ ____

Entire year..... 13,900,000

Legal authority (in addition to sec. 1013):

☒ Antideficiency Act

☐ Other ____

Type of budget authority:

☒ Appropriation

☐ Contract authority

☐ Other ____

Justification: This appropriation provides for the acquisition, modification, and modernization of missiles, torpedoes, other weapons, and related support equipment including spare parts. These funds were provided for additional HARM missiles. This proposal reflects changes in requirements in view of promising developments in the Soviet Union and Eastern Europe.

Estimated Program Effect: The Department of the Navy's ability to successfully accomplish its mission would not be affected by this deferral proposal.

Outlay Effect: (in thousands of dollars)

1990 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
482,757	481,506	-1,251	-3,336	-556	+3,475	+1,182	+111

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Deferral No: D90-16

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Defense **Bureau:** Department of the Navy **Appropriation title and symbol:** Shipbuilding and Conversion, Navy 170/41611	**New budget authority.....** $11,400,061,000 (P.L.101-165) **Other budgetary resources.** _____ **Total budgetary resources.** 11,400,061,000 **Amount to be deferred:** **Part of year.....** $_____ **Entire year.....** 592,398,000
OMB identification code: 17-1611-0-1-051 **Grant program:** [ ] Yes [X] No	**Legal authority** (in addition to sec. 1013): [X] Antideficiency Act [ ] Other _____
Type of account or fund: [ ] Annual [X] Multiple-year Sept. 30, 1994 (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: This appropriation provides for the construction, acquisition, or conversion of Navy ships and vessels including government and contractor furnished long lead components. These funds were provided for dedicated sealift. This proposal reflects changes in requirements in view of promising developments in the Soviet Union and Eastern Europe.

Estimated Program Effect: The Department of the Navy's ability to successfully accomplish its mission would not be affected by this deferral proposal.

Outlay Effect: (in thousands of dollars)

1990 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
460,433	436,737	-23,696	-77,012	-37,321	+50,946	-1,777	+8,886

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Deferral No: D90-17

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Defense **Bureau:** Department of the Navy **Appropriation title and symbol:** Shipbuilding and Conversion, Navy 170/41611	**New budget authority.....** $11,400,061,000 (P.L.101-165) **Other budgetary resources.** ____ **Total budgetary resources.** 11,400,061,000 **Amount to be deferred:** **Part of year.....** $____ **Entire year.....** 324,800,000
OMB identification code: 17-1611-0-1-051 **Grant program:** [ ] Yes [X] No	**Legal authority** (in addition to sec. 1013): [X] Antideficiency Act [ ] Other ____
Type of account or fund: [ ] Annual [X] Multiple-year Sept. 30, 1994 (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other ____

Justification: This appropriation provides for the construction, acquisition, or conversion of Navy ships and vessels including government and contractor furnished long lead components. These were funds were provided for the procurement of an icebreaker for the Coast Guard (USCG). The requirement for USCG icebreakers has yet to be made final. The Department is reviewing the USCG military support requirement to determine if it exceeds the two icebreakers currently in active service. The proposed ship design is also being reviewed to determine if construction can be accomplished within the appropriated funding. These funds have been deferrred as a contingency pending completion of design verification, determination of military requirements and to preclude incurring possible unnecessary sunk costs. This deferral is consistent with the Statement of the Managers in the FY 1990 DoD Appropriation Act which precludes the obligation of these funds until 30 days after the President has forwarded to Congress a report on Polar Icebreaking requirements.

Estimated Program Effect: The Department of the Navy's ability to successfully accomplish its mission would not be affected by this deferral proposal.

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Outlay Effect: (in thousands of dollars)

1990 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
460,433	447,441	-12,992	-42,224	-20,462	+27,933	-974	+4,872

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Deferral No: D90-18

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Defense
Bureau:
Department of the Air Force
Appropriation title and symbol:
Aircraft Procurement, Air Force
570/23010

OMB identification code:
57-3010-0-1-051
Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[X] Multiple-year Sept. 30, 1992 (expiration date)
[ ] No-Year

New budget authority..... $15,673,159,000
(P.L.101-165)
Other budgetary resources. _____
Total budgetary resources. 15,673,159,000

Amount to be deferred:
Part of year..... $_____
Entire year..... 181,700,000

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Justification: This appropriation provides for the construction, procurement, and modification of aircraft and equipment including specialized ground handling equipment, training devices, and spare parts. These funds were provided for MH-60G helicopters and F-4G aircraft. This proposal reflects changes in requirements in view of promising developments in the Soviet Union and Eastern Europe.

Estimated Program Effect: The Department of the Air Force's ability to successfully accomplish its mission would not be affected by this deferral proposal.

Outlay Effect: (in thousands of dollars)

1990 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
917,035	906,315	-10,720	-41,791	-14,354	+38,702	+10,720	+9,812

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Deferral No: D90-19

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Defense **Bureau:** Department of the Air Force **Appropriation title and symbol:** Missile Procurement, Air Force 570/23020	**New budget authority.....** $ 6,763,755,000 (P.L. 101-165) **Other budgetary resources.** _____ **Total budgetary resources.** 6,763,755,000 **Amount to be deferred:** **Part of year.....** _____ **Entire year.....** $ 131,000,000
OMB identification code: 57-3020-0-1-051 **Grant program:** [ ] Yes [X] No	**Legal authority** (in addition to sec. 1013): [X] Antideficiency Act [ ] Other _____
Type of account or fund: [ ] Annual [X] Multiple-year Sept. 30, 1992 (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: This appropriation provides for the construction, procurement and modification of missiles, spacecraft, rockets and related equipment, including spare parts. These funds were provided for additional HARM missiles ($55.0M) and Minuteman II guidance computer modifications ($76.0M). This proposal reflects changes in requirements in view of promising developments in the Soviet Union and Eastern Europe.

Estimated Program Effect: The Department of the Air Force's ability to successfully accomplish its mission would not be affected by this deferral proposal.

Outlay Effect: (in thousands of dollars)

1990 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
1,558,398	1,551,848	-6,550	-23,580	-18,340	+15,720	+26,200	-524

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Deferral No: D90-20

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Defense	**New budget authority.....** $ 8,394,733,000 (P.L. 101-165)
Bureau: Department of the Air Force	**Other budgetary resources.**
Appropriation title and symbol: Other Procurement, Air Force 570/23080	**Total budgetary resources.** 8,394,733,000
	Amount to be deferred: Part of year.....
	Entire year..... $ 70,000,000
OMB identification code: 57-3080-0-1-051	**Legal authority** (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other
Type of account or fund: [ ] Annual	**Type of budget authority:** [X] Appropriation
[X] Multiple-year Sept. 30, 1992 (expiration date)	[ ] Contract authority
[ ] No-Year	[ ] Other

Justification: This appropriation provides for the procurement and modification of communication and electronic equipment including supplies, materials, and spare parts. These funds were provided to procure additional Combined Effects Munitions. This proposal reflects changes in requirements in view of promising developments in the Soviet Union and Eastern Europe.

Estimated Program Effect: The Department of the Air Force's ability to successfully accomplish its mission would not be affected by this deferral proposal.

Outlay Effect: (in thousands of dollars)

1990 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
497,513	487,363	-10,150	-8,400	-1,050	+7,350	+7,210	+1,890

17

Deferral No: D90-21

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Defense
Bureau: Office of the Secretary of Defense
Appropriation title and symbol:
National Guard and Reserve Equipment, Defense
970/20350

OMB identification code:
97-0350-0-1-051
Grant program: [ ] Yes [X] No

Type of account or fund:
[ ] Annual
[X] Multiple-year Sept. 30, 1992 (expiration date)
[ ] No-Year

New budget authority..... $ 973,720,000
(P.L. 101-165)
Other budgetary resources. —
Total budgetary resources. 973,720,000

Amount to be deferred:
Part of year..... —
Entire year..... $ 40,900,000

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other —

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other —

Justification: This appropriation provides for the procurement of aircraft, missiles, tracked combat vehicles, ammunition, other weapons, and other procurement for the reserve components of the Armed Forces. These funds were provided for the procurement of sonobuoys, trainers, equipment installation and miscellaneous equipment. This proposal reflects changes in requirements in view of promising developments in the Soviet Union and Eastern Europe.

Estimated Program Effect: The Department of the Defense's ability to successfully accomplish its mission would not be affected by this deferral proposal.

Outlay Effect: (in thousands of dollars)

1990 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
102,413	97,996	-4,417	-7,526	+6,830	-6,135	+7,158	+736

18

Deferral No: D90-22

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Defense **Bureau:** Department of the Air Force **Appropriation title and symbol:** Research, Development, Test and Evaluation, Air Force 570/13600	**New budget authority.....** $13,625,564,000 (P.L. 101-165) **Other budgetary resources.** ____ **Total budgetary resources.** 13,625,564,000 **Amount to be deferred:** **Part of year.....** ____ **Entire year.....** $ 100,000,000
OMB identification code: 57-3600-0-1-051 **Grant program:** [ ] Yes [X] No	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other ____
Type of account or fund: [ ] Annual [X] Multiple-year Sept. 30, 1991 (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other ____

Justification: This appropriation provides for expenses necessary for basic and applied research, development, testing and evaluation including maintenance, rehabilitation, lease and operation of facilities and equipment. Details associated with this deferral are classified and will be provided separately.

Estimated Program Effect: The Department of the Air Force's ability to successfully accomplish its mission would not be affected by this deferral proposal.

Outlay Effect: (in thousands of dollars)

1990 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
6,961,609	6,910,409	-51,200	+15,900	+26,800	+6,200	+1,100	+1,200

19

Deferral No: D90-23

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Defense **Bureau:** Office of the Secretary of Defense **Appropriation title and symbol:** Research, Development, Test and Evaluation, Defense Agencies 970/10400	**New budget authority.....** $ 8,109,793,000 (P.L. 101-165) **Other budgetary resources.** 22,000,000 **Total budgetary resources.** 8,131,793,000 **Amount to be deferred:** Part of year..... Entire year..... $ 21,000,000
OMB identification code: 97-0400-0-1-051 **Grant program:** [ ] Yes [X] No	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [X] Other P.L. 101-189
Type of account or fund: [ ] Annual [X] Multiple-year Sept. 30, 1991 (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

Justification: This appropriation provides for expenses of activities and agencies of the Department of Defense (other than the military departments) necessary for basic and applied research, development, testing and evaluation including maintenance, rehabilitation, lease and operation of facilities and equipment. These funds were provided for various university research projects ($8.0M) and Defense Advance Projects Research Agency (DARPA) software efforts ($13.0M). The university funds cannot be obligated due to legal constraints and competition policy considerations pursuant to Section 252 of the FY 1991 National Defense Authorization Act. The funds for DARPA software efforts are deferred on the basis of changes in requirements in view of promising developments in the Soviet Union and Eastern Europe.

Estimated Program Effect: The Department of the Defense's ability to successfully accomplish its mission would not be affected by this deferral proposal.

D90-23

Outlay Effect: (in thousands of dollars)

1990 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
4,124,126	4,113,521	-10,605	+2,730	+6,048	+1,407	+420	---

21

Deferral No: D90-24

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Defense
Bureau:
Department of the Army
Appropriation title and symbol:
Military Construction, Army
210/42050

OMB identification code:
21-2050-0-1-051
Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[X] Multiple-year Sept. 30, 1994 (expiration date)
[ ] No-Year

New budget authority..... $ 819,129,000
(P.L. 101-148)
Other budgetary resources. 33,650,000
Total budgetary resources. 852,779,000

Amount to be deferred:
Part of year.....
Entire year..... $ 3,200,000

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Justification: This appropriation provides for the construction, acquisition, installation and equipment for temporary or permanent public works, military installations, facilities, and real property for the Army. These funds were provided for one access road construction project at the Tobyhanna, PA. Army Depot. This proposal reflects changes in requirements in view of promising developments in the Soviet Union and Eastern Europe.

Estimated Program Effect: The Department of the Army's ability to successfully accomplish its mission would not be affected by this deferral proposal.

Outlay Effect: (in thousands of dollars)

1990 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
262,163	261,139	-1,024	-224	+704	+384	+32	+106

Deferral No: D90-25

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Defense **Bureau:** Department of the Navy **Appropriation title and symbol:** Military Construction, Navy 170/41205	**New budget authority.....** $ 1,139,250,000 (P.L. 101-148) **Other budgetary resources.** 946,000 **Total budgetary resources.** 1,140,196,000 **Amount to be deferred:** **Part of year.....** **Entire year.....** $ 16,150,000
OMB identification code: 17-1205-0-1-051 **Grant program:** [ ] Yes [X] No	**Legal authority** (in addition to sec. 1013): [X] Antideficiency Act [ ] Other
Type of account or fund: [ ] Annual [X] Multiple-year Sept. 30, 1994 (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

Justification: This appropriation provides for the construction, acquisition, installation, and equipment for temporary or permanent public works, naval installations, facilities, and real property for the Navy, including personnel in the Naval Facilities Engineering Command, and other personnel services necessary for the purposes of the appropriation. These funds were provided for four Marine Corps construction projects, three in Japan and one at Camp Lejeune, NC. This proposal reflects changes in requirements in view of promising developments in the Soviet Union and Eastern Europe.

Estimated Program Effect: The Department of the Navy's ability to successfully accomplish its mission would not be affected by this deferral proposal.

Outlay Effect: (in thousands of dollars)

1990 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
187,989	185,324	-2,665	-5,814	+5,087	+2,503	+484	+242

23

Deferral No: D90-26

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Defense
Bureau:
Department of the Army
Appropriation title and symbol:
Military Construction, Army National Guard
210/42085

OMB identification code:
21-2085-0-1-051
Grant program: [ ] Yes [X] No

Type of account or fund:
[ ] Annual
[X] Multiple-year Sept. 30, 1994 (expiration date)
[ ] No-Year

New budget authority..... $ 223,490,000
(P.L. 101-148)
Other budgetary resources. ____
Total budgetary resources. 223,490,000

Amount to be deferred:
Part of year..... ____
Entire year..... $ 18,301,000

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other ____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other ____

Justification: This appropriation provides for the construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Army National Guard. These funds were provided for various undetermined projects. This proposal reflects changes in requirements in view of promising developments in the Soviet Union and Eastern Europe.

Estimated Program Effect: The Department of the Army's ability to successfully accomplish its mission would not be affected by this deferral proposal.

Outlay Effect: (in thousands of dollars)

1990 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
16,044	14,726	-1,318	-7,796	+3,258	+4,758	+549	+366

24

Deferral No: D90-27

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Defense **Bureau:** Department of the Air Force **Appropriation title and symbol:** Military Construction, Air National Guard 570/43830	**New budget authority.....** $ 235,867,000 (P.L. 101-148) **Other budgetary resources.** ____ **Total budgetary resources.** 235,867,000 **Amount to be deferred:** **Part of year.....** ____ **Entire year.....** $ 36,841,000
OMB identification code: 57-3830-0-1-051 **Grant program:** [ ] Yes [X] No	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other ____
Type of account or fund: [ ] Annual [X] Multiple-year Sept. 30, 1994 (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other ____

Justification: This appropriation provides for the construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Air National Guard. These funds were provided for various undetermined projects. This proposal reflects changes in requirements in view of promising developments in the Soviet Union and Eastern Europe.

Estimated Program Effect: The Department of the Air Force's ability to successfully accomplish its mission would not be affected by this deferral proposal.

Outlay Effect: (in thousands of dollars)

1990 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
18,872	15,925	-2,947	-19,894	+16,210	+4,053	+1,105	+1,289

25

Deferral No: D90-28

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Defense **Bureau:** Department of the Army **Appropriation title and symbol:** Military Construction, Army Reserve 210/42086	**New budget authority.....** $ 96,124,000 (P.L. 101-148) **Other budgetary resources.** ____ **Total budgetary resources.** 96,124,000 **Amount to be deferred:** **Part of year.....** ____ **Entire year.....** $ 16,660,000
OMB identification code: 21-2086-0-1-051 **Grant program:** [ ] Yes [X] No	**Legal authority** (in addition to sec. 1013): [X] Antideficiency Act [ ] Other ____
Type of account or fund: [ ] Annual [X] Multiple-year Sept. 30, 1994 (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other ____

Justification: This appropriation provides for the construction, acquisition, expansion, and conversion of facilities for the training and administration of the Army Reserve. These funds were for various undetermined projects. This proposal reflects changes in requirements in view of promising developments in the Soviet Union and Eastern Europe.

Estimated Program Effect: The Department of the Army's ability to successfully accomplish its mission would not be affected by this deferral proposal.

Outlay Effect: (in thousands of dollars)

1990 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
12,974	10,725	-2,249	-6,997	+6,081	+1,999	+833	+83

[FR Doc. 90-3425 Filed 2-13-90; 8:45 am]
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Federal Register

Wednesday
February 14, 1990

Part VIII

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4 et al.

Implementation of Alcoholic Beverage Labeling Act of 1988; Health Warning Statement; Final Rule

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, 7, and 16

[T.D. ATF-294; Ref: T.D. ATF-282 and Notice No. 678]

RIN 1512-AA82

Implementation of Alcoholic Beverage Labeling Act of 1988; Health Warning Statement (88F406P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This final rule implements the provisions of the Alcoholic Beverage Labeling Act of 1988, Title VIII of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690, 102 Stat. 481). These regulations implement the statute by requiring that a health warning statement appear on the labels of all containers of alcoholic beverages sold or distributed in the United States, as well as on containers of alcoholic beverages that are sold, distributed, or shipped to members or units of the U.S. Armed Forces, including those located outside the United States. This rule will have the effect of promoting the public health and safety, which is the stated purpose of the statute.

This final rule supersedes the temporary rule (T.D. ATF-282) on this subject which was published in the **Federal Register** on February 16, 1989 (54 FR 7160), effective November 14, 1990.

EFFECTIVE DATE: The final regulations are effective and, become mandatory November 14, 1990.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

I. Legislative Background

Title VIII of the Anti-Drug Abuse Act of 1988, Pub. L. 100-690 (enacted November 18, 1988), amended the Federal Alcohol Administration Act (FAA Act) of August 29, 1935 (27 U.S.C. 201 et seq.) by designating the existing sections of the FAA Act as "Title I," and by adding at the end a new title, "Title II—Alcoholic Beverage Labeling." This title, cited as the "Alcoholic Beverage Labeling Act of 1988" (hereinafter, "Title II" or "the Act"), requires that a specific health warning statement appear on the labels of all containers of alcoholic beverages for sale or distribution in the United States. This requirement applies both to interstate and intrastate sale and distribution of alcoholic beverages. In addition, the health warning statement must appear on containers of alcoholic beverages that are sold, distributed, or shipped to members or units of the U.S. Armed Forces, including those located outside the United States.

The health warning statement required by section 204(a) of the Act advises consumers of the risks of birth defects to pregnant women, impairment of the ability to operate a car or other machinery, and other potential health problems resulting from the consumption of alcoholic beverages. As stated in section 202 of the Act:

> The Congress finds that the American public should be informed about the health hazards that may result from the consumption or abuse of alcoholic beverages, and has determined that it would be beneficial to provide a clear, nonconfusing reminder of such hazards, and that there is a need for national uniformity in such reminders in order to avoid the promulgation of incorrect or misleading information * * *.

For the reasons noted above, the law provides that no State may require any statement concerning alcoholic beverages and health, other than the required health warning statement, on any alcoholic beverage container, box, carton, or other package that contains such a container.

For purposes of title II, the term "alcoholic beverage" includes any beverage in liquid form which contains not less than one-half of one percent (.5%) of alcohol by volume and is intended for human consumption. Thus, the term includes distilled spirits products, malt beverages, wines, and wine coolers. The term "container" is defined as the innermost sealed container, irrespective of the material from which made, in which an alcoholic beverage is placed by the bottler and in which such beverage is offered for sale to members of the general public.

Section 204 of the Act specifies that the health warning statement "shall be located in a conspicuous and prominent place on the container * * * as determined by the Secretary, shall be in type of a size determined by the Secretary, and shall appear on a contrasting background." Congress anticipated that the Secretary of the Treasury, "may consider current [alcoholic beverge labeling] regulations and will need to take into account variations in the size and shape of individual containers * * *." Report of the Senate Committee on Commerce, Science, and Transportation on the Alcoholic Beverage Labeling bill (S. 2047), S. Rep. No. 596, 100th Cong., 2d Sess. 3 (1988).

Finally, section 204 of the Act provides that compliance with the health warning labeling requirement becomes effective one year after the date of enactment of title II, i.e., on November 18, 1989.

II. Temporary Rule

On February 16, 1989, ATF published in the **Federal Register** a temporary rule (T.D. ATF-282, 54 FR 7160) which added a new part 16 to title 27, Code of Federal Regulations (CFR), requiring that the following health warning statement appear on all containers of alcoholic beverages bottled on and after November 18, 1989, for sale or distribution in the United States:

> *Government warning:* (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

The temporary rule was issued by ATF to effect the requirement in section 204 of the Act that the Secretary issue regulations implementing the health warning requirement within 90 days after the date of enactment. The temporary rule served to provide immediate guidance to assist alcoholic beverage producers and importers in their compliance with the November 18, 1989 effective date.

In determining the requirements set forth in the temporary rule for disclosure of the health warning statement the Bureau relied upon the current regulations in parts 4, 5, and 7 of title 27, CFR, relating to the labeling advertising of wine, distilled spirits, and malt beverages, respectively.

In particular, the Bureau believed that consideration of existing labeling requirements for the mandatory disclosure of the artificial sweetener saccharin was appropriate, since those requirements were implemented by the Bureau in recognition of the health warning statement set forth in the Saccharin Study and Labeling Act (21 U.S.C. 343).

A. Placement/Legibility

As specified in existing regulations, 27 CFR 4.32(d), 5.32(b)(6), and 7.22(b)(5), any alcohol beverage product which contains saccharin must bear on its label a health warning statement disclosing the presence of that ingredient. The warning statement may appear on a front (i.e., brand label or

separate front label) or back label, and shall be separate and apart from all other information. In giving effect to this requirement, the Bureau has authorized disclosure on a side label. Furthermore, as prescribed in 27 CFR 4.38, 5.33, and 7.28, all mandatory labeling information, including the saccharin warning, must be readily legible and on a contrasting background.

Similarly, the temporary rule prescribed regulations which require the health warning statement specified in Title II to appear on the brand label or separate front label, or on a back or side label, separate and apart from all other information, readily legible and on a contrasting background. Furthermore, the label upon which the health warning statement appears must be firmly affixed to the container. The Bureau believed that these regulations provided flexibility to producers of alcoholic beverages with respect to placement of warning statement and also complied with the statutory requirement that the warning statement be in a "conspicuous and prominent" place on the container.

B. Type Size

Minimum type size requirements for mandatory label information for wine, distilled spirits, and malt beverages are prescribed in 27 CFR 4.38(b), 5.33(b), and 7.28(b), respectively. For containers of wine of more than 187 milliliters (6.3 fl. oz.) e.g. 375 milliliters, 750 milliliters, 1 liter, 1.5 liters, 3 liters, etc. the minimum type size for mandatory information (excluding alcoholic content) is two millimeters. For containers of wine of 187 milliliters or less (e.g., 100 milliliters, 50 milliliters, etc.), the minimum type size for mandatory information is one millimeter.

For containers of distilled spirits bottled in an authorized metric standard of fill of more than 200 milliliters (6.8 fl. oz) i.e., 375 milliliters, 750 milliliters, 1 liter, or 1.75 liters, the minimum type size for mandatory information is two millimeters. For containers of distilled spirits bottled in an authorized metric standard of fill of 200 milliliters or less i.e., 100 milliliters or 50 milliliters, the minimum type size for mandatory information is one millimeter.

For malt beverages in containers having a capacity of more than one-half pint (8 fl. oz.), approximately 237 milliliters, the minimum type size for mandatory information is two millimeters. For containers of one-half pint or less, the minimum type size for mandatory information is one millimeter.

Similarly, the temporary rule specified that for alcoholic beverages in large containers, i.e, having a capacity of more than 237 milliliters (8 fl. oz.), the minimum type size for the health warning statement is two millimeters. For containers of alcoholic beverages having capacity of 237 milliliters or less, the minimum type size of the health warning statement specified in the temporary rule is one millimeter.

C. Bottling Date, Exports, Conforming Amendments

The temporary rule emphasized that the requirement for a health warning statement does not apply to alcoholic beverages bottled *prior to* November 18, 1989. In this regard, the Senate Committee report accompanying the bill stated:

"The bill, as reported, requires that bottlers affix a warning label to all alcoholic beverage containers bottled 12 months or more after the date of enactment." S. Rep. No. 596, 100th Cong., 2d Sess. 3 (1988). The report goes on to note that "[t]he Committee does not intend that the labeling requirment * * * require the labeling or relabeling of alcoholic beverges that were bottled prior to the expiration of the 12-month period specified * * *." S. Rep. No. 596 at 6–7. Thus, alcoholic beverages bottled prior to November 18, 1989, whether labeled or not, need not include the health warning statement on the container.

The temporary rule further noted that, pursuant to section 204(c) of title II, the health warning labeling requirement does not apply to alcoholic beverages produced, imported, bottled, or labeled for export from the United States, or for delivery to an aircraft or vessel as supplies for consumption beyond the jurisdiction of the internal revenue laws of the United States. This exemption does not apply to alcoholic beverages for sale, distribution, or shipment to the U.S. Armed Forces.

Finally, the temporary rule also made amendments to §§ 4.32, 5.32, and 7.22 of the regulations to identify the health warning statement as mandatory label information for purposes of those sections.

III. Notice No. 678

On February 16, 1989, ATF also published a notice of proposed rulemaking (Notice No. 678, 54 FR 7164) soliciting comments on each of the requirements for the health warning statement specified in the temporary rule. The comment period for Notice No. 678 closed on April 3, 1989, with the Bureau receiving 12,758 comments, representing 13,821 signatures. Comments were submitted by consumers, health organizations, religious organizations, industry members (representing both domestic and foreign interests), members of Congress (on behalf of themselves and their constituents), foreign governments, one Federal agency, State agencies, and one State Government.

A. Analysis of Comments

1. Report on Health Warning Labels

Shortly after the enactment of title II, the Surgeon General of the Public Health Service provided the Department with a copy of a report that had been transmitted to Congress by the Secretary of Health and Human Services in August 1987. This report was submitted for ATF's reference in the development of regulations implementing the Act. The report discussed, among other things, the impact of label design on consumer attention to and comprehension of warning messages. In particular, the report noted that research studies indicated that "the most effective labels are those which (1) are prominent with regard to other information presented on the product label, (2) are printed in large letters and contrasting colors, and (3) do not present too much information for the consumer to assimilate." However, no specifics were given in the report concerning actual placement or type size of the health warning statement on labels.

2. Comments Relating to Temporary Rule

Many commenters expressed their opposition to having a health warning statement on labels of alcoholic beverages, while other suggested that the working of the statement should be modified. However, to effectuate any changes to the required health warning statement, including its wording, legislative action would be necessary to amend the Act.

Of the 12,301 comments that addressed the Bureau's temporary regulations, over 94% (11,571) expressed support for the temporary rule. These comments believed that the requirements of the temporary regulations with respect to placement, type size, and legibility of the health warning statement were consistent with Congress' intent and met the statutory requirement that the warning statement be conspicuous and prominent. Several commenters, who generally supported the temporary rule, did request, however, that the final rule specify exact type sizes for the health warning statement, rather than prescribing a minimum type size.

In addition, several commenters expressed confusion concerning what the temporary regulations required with respect to the printing of the first two words of the prescribed health warning statement ("Government warning"). As printed in § 16.21, the word "*Government warning*" were italicized but there was no specific direction in the temporary rule requiring that these words be italicized or otherwise set apart from the rest of the warning. Accordingly, several commenters requested clarification on this point.

The Bureau received 730 comments opposing the temporary regulations (notably from groups such as the Center for Science in the Public Interest and the National Council on Alcoholism), with most commenters requesting the following:

(1) That the warning statement appear on the front of the container;
(2) That the warning statement be outlined in a box to set it apart from other information on the label;
(3) That on larger containers, the warning statement appear in a larger size of type; and
(4) That the use of script, italic, and other difficult to read type faces be prohibited.

In addition, several commenters requested that the health warning statement appear on all alcoholic beverages bottled *and labeled* on and after November 18, 1989. However, as emphasized in the temporary rule, the legislative history of the Act clearly shows that Congress intended that the health warning statement be placed only on the labels of alcoholic beverages *bottled* 12 months or more after the date of enactment. This final rule specifies that it is the responsibility of the U.S. importer or bottler to provide, upon request, sufficient evidence to establish that the alcoholic beverage was bottled before November 18, 1989.

IV. General Accounting Office Report

In April and May 1989, pursuant to a request made by the Chairman of the Senate Governmental Affairs Committee, the United States General Accounting Office (GAO) reviewed the Bureau's implementation of the Act.

In their report entitled, *ALCOHOL WARNING LABELS: Current Rules May Allow Health Warnings to Go Unnoticed* (GAO/HRD–89–118, dated June 14, 1989), the GAO stated that it had reviewed some 98 labels approved by the Bureau after publication of the temporary rule. The GAO noted that in 38 percent of the labels the warning statement was less noticeable because the words "GOVERNMENT WARNING" were not emphasized in bold type. The GAO also noted that in some cases the letters of words in the warning statement were closely spaced, "making the statement both difficult to notice and read." For example, the GAO criticized one container that displayed a statement containing approximately 28 characters per inch.

Consequently, the GAO recommended that ATF's final regulations (1) specify that the words "GOVERNMENT WARNING" be capitalized and in bold type, and (2) specify the minimum space and lettering requirements for the health warning statement; for example, the number of letters per inch. The GAO believed that adoption of these two recommendations would help assure that the warning statement is legible, conspicuous and prominent.

V. Examination of Labels by ATF

Since the publication of the temporary rule in February 1989, ATF has had occasion to review and issue certificates of label approval in connection with a number of alcoholic beverage labels that bear the health warning statement. Based upon its re-examination of these labels, ATF has determined that there is a need to provide the industry with more specific guidelines in the final regulations concerning the disclosure of the health warning statement. In addition, ATF believes that certain requirements, in addition to the requirements for disclosure set forth in the temporary rule, are necessary with respect to type size and general legibility of the warning statement to ensure that the consumer is alerted to the provisions of the warning statement.

VI. Discussion—Final Rule

A. Placement/Conspicuousness

In light of the statutory requirement that the health warning statement be located "in a conspicuous and prominent place" on the container, ATF specifically solicited comments on the placement issue. As mentioned, some commenters believed that the warning statement should appear on a front label or be outlined in a box to set it apart from other information. Other commenters opposed a front label or box requirement.

ATF believes that it was Congress' intention to fully and adequately inform the public about the potential hazards of alcohol consumption, while providing a fair amount of flexibility to the affected industry, particularly as it relates to the placement of the health warning statement. Noteworthy in this regard are the following remarks of Senator John Danforth, a member of the Senate Commerce Committee that drafted the warning statement legislation:

> * * * it is intended that the Secretary's regulations regarding placement of the label statement be as flexible as possible * * *. In specifying label placement, flexibility is necessitated by variations in the size and shape of individual beverage containers—as well as a variety of practical and esthetic constraints * * *. Thus, the warning statement should be permitted to be placed in any of several locations on a given container, * * * and still comply with the requirement that the display be "conspicuous and prominent." * * * 134 Cong. Rec. S17 354–55 (daily ed. Nov. 10, 1988) (statement of Sen. Danforth)

Although not a member of the Senate Commerce Committee, Senator Dennis DeConcini expressed similar views. *See* 134 Cong. Rec. S17 359 (daily ed. Nov. 10, 1988) (statement of Sen. DeConcini).

In comments provided to ATF in connection with the temporary rule, Senator Danforth reaffirmed that the Senate Commerce Committee intended the Secretary to consult current labeling requirements for alcoholic beverages. He indicated that the requirement in the temporary rule that the warning statement appear on the brand label or separate front label, or on a back or side label of the container is consistent with the Committee's deliberations.

In considering the placement of the health warning statement on labels of alcoholic beverages, the Bureau has collected samples of other products (e.g., foods, over-the-counter drugs, cigarettes, etc.) bearing some sort of warning statement on the label. In each instance, although the warning statement was not positioned on a front label, it did appear to be prominent and readily legible. This was due to the manner in which the warning statement was displayed, e.g., in bold dark type, separated from other information, highlighted in a different color, or by the prominence of the word "WARNING."

Similarly, ATF believes that it is not necessary that the health warning statement be confined to the front label of a container. ATF believes that consumers are accustomed to reading front, back, and side labels, not only on foods and drugs but on alcoholic beverages as well. Furthermore, ATF believes that by requiring the alcohol health warning statement to appear separate and apart from all other information, readily legible and on a contrasting background, as specified in this final rule, the consumer will notice the warning. Consequently, the Bureau does not believe that placing a frame or box around the warning statement is necessary.

B. First Two Words ("Government Warning")

As printed in § 16.21 of the temporary regulations, the words "Government warning" were italicized, however, there was no specific direction in the temporary rule requiring that these words be italicized. Consequently, when the Bureau received applications for certificates of label approval, and the label included the prescribed health warning statement, the first two words appeared in various forms (e.g., italics, underlined, all capital letters, bold type, etc.).

Having re-examined approved alcoholic beverage labels bearing the health warning statement and after taking into consideration the GAO recommendation as well as the request of industry members for guidance on this issue, ATF has made a determination that the warning message is more noticeable and conspicuous with the words "GOVERNMENT WARNING" appear in capital letters and in bold type. ATF believes that emphasizing the first two words will help insure that the consumer's attention is drawn to the health warning statement.

Accordingly, the final regulations specify that the words "GOVERNMENT WARNING" shall appear in capital letters and in bold type. The remainder of the warning statement may not appear in bold type. ATF would note that this requirement is consistent with warning statements on the labels of many other products that the Bureau has examined.

C. Type Size

The temporary regulations specified a minimum type size of one millimeter for containers having a capacity of 237 milliliters or less (8 fl. oz.). A minimum type size of two millimeters was specified for all other containers. These requirements are similar to those set forth in 27 CFR parts 4, 5, and 7, for the disclosure of mandatory information on alcoholic beverage containers.

As indicated above, most commenters who opposed the temporary regulations requested that the final regulations specify a type size larger than two millimeters for larger containers. Although many commenters suggested that the additional type size should be four millimeters, there was no consensus as to what constituted a "larger container."

For example, the Center of Science in the Public Interest (CSPI) recommended that a four millimeter type size be required for alcoholic beverages in containers having a capacity of 12 fl. oz. or more. Another commenter recommended a minimum four millimeter type size for products in containers having a capacity of 16 fl. oz. or more, while the National Council on Alcoholism, Inc. (NCA) recommended the adoption of at least four millimeters for containers larger than 750 milliliters (25.4 fl. oz.).

The legislative history of the Act clearly shows that Congress anticipated that variations in the size and shape of individual containers be taken into consideration in determining the requirements for disclosure of the health warning statement. Having re-examined the issue, ATF believes that the establishment of an additional type size for larger containers is warranted to ensure that the consumer's attention is drawn to the health warning.

ATF has determined that a larger type size is necessary to ensure that the warning is noticeable on containers having a capacity of excess of three liters (101 fl. oz.). With respect to containers having a capacity of less than three liters (i.e., all distilled spirits containers and most wine and malt beverage containers), ATF's experience in administering the labeling requirements under the FAA Act has demonstrated that the two millimeter type size adequately serves to apprise the consumer of all mandatory information on the label. Furthermore, ATF believes that the requirement that the words "GOVERNMENT WARNING" appear in capital letters and in bold type, in conjunction with the other requirements in this final rule, will ensure that the consumer is alerted to the health warning statement.

However, the Bureau believes that because of their larger surface area, containers in excess of three liters pose the potential that a warning statement in a two millimeter type size will not be as noticeable to the consumer. Accordingly, the final regulations specify that for alcoholic beverages in containers having a capacity of more than three liters (101 fl. oz.), the minimum type size for the warning statement is three millimeters. Due to the length of the warning statement (41 words), ATF believes that the three millimeter type size is more appropriate than the type size recommended by the commenters. The three millimeter type size will ensure that the warning is conspicuous and, at the same time, afford flexibility to the producer with respect to the placement of the warning.

Finally, with respect to the request of several commenters that the Bureau prescribe exact, rather than minimum, type size requirements for the health warning statement, ATF believes that a minimum type size affords flexibility to the producer and best effectuates the purpose of the statute.

D. Legibility

1. Use of Script or Italic Type

Several commenters had requested that the final regulations prohibit the warning statement from appearing in script, italic, and "other difficult to read" type. ATF has determined that there is no need to prohibit the use of script, italic, or similar types of print. Having examined alcoholic beverage containers bearing the health warning statement, ATF believes that the use of script or italic print may, in some instances, serve to distinguish the warning statement from the other information on the label. More significantly, it must be emphasized that, regardless of the typeface used, the final regulations require that the warning statement be clearly legible.

2. No Compression/Maximum Characters Per Inch

In its examination of alcoholic beverage labels bearing the health warning statement, the Bureau has observed that the statement is easier to read and more legible when the letters and words have sufficient space between them, i.e., they are not compressed. At the same time, the Bureau has observed that on containers required to display the warning statement in two millimeter size type, a statement that contains approximately 25 characters per inch tends not to exhibit compression of letters and/or words and is also easier to read. The same holds true for a statement in one millimeter type that contains approximately 40 characters per inch.

The GAO made a similar observation in its June 1989 report, and thus recommended that ATF's final rule specify space and lettering requirements for the warning statement. As stated in their report, "[t]he readability of the warning statement could also be enhanced by setting a specific standard for the number of letters that can be used in a designated amount of space; for example, the number of letters per inch."

Accordingly, the Bureau is specifying in this final rule that the letters and/or words of the health warning statement

may not be compressed in such a manner that the statement is not readily legible (i.e., touching, and/or overlapping to such a degree as to render the statement or particular words in the statement, not readily legible). Examples of unacceptable warning statements where the letters and/or words are compressed are as follows:

BILLING CODE 4810-31-M

GOVERNMENTWARNING:(1)AccordingtotheSurgeon General,womenshouldnotdrinkalcoholicbeverages duringpregnancybecauseoftheriskofbirthdefects. (2)Consumptionofalcoholicbeveragesimpairsyour abilitytodriveacaroroperatemachinery,andmaycause healthproblems.

GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

GOVERNMENT WARNING: (1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS.(2)CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.

BILLING CODE 4810-31-C

In addition, the final regulations specify the maximum number of characters (i.e., letters, numbers, marks) permitted per inch that the health warning statement may appear in, as follows:

Minimum required type size for warning statement	Maximum number of characters per inch
1 millimeter	40
2 millimeters	25
3 millimeters	12

ATF believes that the above requirement will ensure that the health warning statement on each alcoholic beverage container is more easily read by the average consumer. In addition, the specification of maximum characters per inch provides the industry with a specific guideline which will assist them in designing labels to accommodate the health warning statement.

The Bureau would emphasize, however, that regardless of the number of characters per inch, if the letters and/or words of the health warning statement are compressed in the manner described above, such statement will not be in compliance with the regulations.

E. Amendments to 27 CFR Parts 4, 5, and 7

Finally, some commenters took exception to the temporary rule which included amendments to the regulations relating to wine, distilled spirits, and malt beverages, 27 CFR parts 4, 5, and 7, respectively, to include references to the health warning statement required by 27 CFR part 16.

The regulations in parts 4, 5, and 7 were amended in the temporary rule pursuant to the authority vested in the Secretary by virtue of section 105(e) of the FAA Act, 27 U.S.C. 205(e). These amendments to parts 4, 5, and 7 were primarily intended to facilitate ATF's supervision of industry's compliance with the requirements of Title II by utilizing the label approval process established under those parts.

However, section 204(d) of the Alcoholic Beverage Labeling Act of 1988 also vests in the Secretary the power to ensure the enforcement of the warning label requirement and issue regulations to carry out this mandate. Consequently, ATF believes that if can achieve the same result even more effectively by amending the regulations in part 16 to specifically include a certificate of label approval requirement, rather than by amending parts 4, 5, and 7.

Accordingly, the final regulations in § 16.30 provide that for alcoholic beverages bottled on or after November 18, 1989, applications for certificates of label/bottle approval or certificates of exemption from label approval issued pursuant to parts 4, 5, and 7 of the regulations, shall not be approved by the Director unless the label bears the required health warning statement.

In addition, existing certificates of label approval for alcoholic beverages which do not meet the requirements of this final rule will expire upon the mandatory effective date of this Treasury decision.

The Bureau would also remind industry members that the issuance of a basic permit under the FAA Act, as specified in section 104(d), 27 U.S.C. 204(d), is conditioned, among other things, upon compliance with "all other Federal laws relating to distilled spirits, wine, and malt beverages, * * *." This includes compliance with the provisions of the Alcoholic Beverage Labeling Act of 1988.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required. This determination is based on the fact that the economic effects of this final rule flow directly from the underlying statute. Therefore, this final rule will not have an annual effect on the economy of $100 million or more; will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or foreign markets.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This certification is based upon the fact that the general economic effects flow directly from the underlying statute, as well as from the fact that this final rule does not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities, and is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Disclosure

Copies of the temporary rule, the notice of proposed rulemaking, all written comments, and this final rule will be available for public inspection during normal business hours at: Disclosure Branch, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling.

27 CFR Part 16

Beer, Consumer protection, Customs duties and inspection, Health, Imports, Labeling, Liquors, Packaging and containers, Safety, Wine.

Authority and Issuance

27 CFR Part 4—Labeling and Advertising of Wine is amended as follows:

PART 4—[AMENDED]

Paragraph 1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of contents is amended by adding in the CROSS REFERENCES section the phrase "27 CFR part 16—Alcoholic Beverage Health

Warning Statement." immediately after "27 CFR Part 7—Labeling and Advertising of Malt Beverages."

27 CFR part 5—Labeling and Advertising of Distilled Spirits is amended as follows:

PART 5—[AMENDED]

Par. 3. The authority citation for 27 CFR part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805; 27 U.S.C. 205.

Par. 4. Section 5.2 is amended by adding a new phrase immediately after "27 CFR Part 7—Labeling and Advertising of Malt Beverages." to read as follows:

§ 5.2 Related regulations.

* * * * *

27 CFR Part 16—Alcoholic Beverage Health Warning Statement.

* * * * *

27 CFR Part 7—Labeling and Advertising of Malt Beverages is amended as follows:

PART 7—[AMENDED]

Par. 5. The authority citation for 27 CFR part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 6. Section 7.4 is amended by adding a new phrase immediately after "27 CFR Part 5—Labeling and Advertising of Distilled Spirits." to read as follows:

§ 7.4. Related regulations.

* * * * *

27 CFR Part 16—Alcoholic Beverage Health Warning Statement.

* * * * *

Par. 7. Title 27 is amended by the addition of part 16 to read as follows:

PART 16—ALCOHOLIC BEVERAGE HEALTH WARNING STATEMENT

Subpart A—Scope

Sec.
16.1 General.
16.2 Territorial extent.

Subpart B—Definitions

16.10 Meaning of terms.

Subpart C—Health Warning Statement Requirements for Alcoholic Beverages

16.20 General.
16.21 Mandatory label information.
16.22 General requirements.

Subpart D—General Provisions

16.30 Certificates of label approval.
16.31 Exports.
16.32 Preemption.

Authority: 27 U.S.C. 205, 215.

Subpart A—Scope

§ 16.1 General.

The regulations in this part relate to a health warning statement on labels of containers of alcoholic beverages.

§ 16.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and the territories and possessions of the United States.

Subpart B—Definitions

§ 16.10 Meaning of terms.

As used in this part, unless the context otherwise requires, terms shall have the meaning ascribed in this section.

Act. The Alcoholic Beverage Labeling Act of 1988.

Alcoholic beverage. Includes any beverage in liquid form which contains not less than one-half of one percent (.5%) of alcohol by volume and is intended for human consumption.

ATF. The Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury.

Bottle. To fill a container with an alcoholic beverage and to seal such container.

Bottler. A person who bottles an alcoholic beverage.

Brand label. The label carrying, in the usual distinctive design, the brand name of the alcoholic beverage.

Container. The innermost sealed container, irrespective of the material from which made, in which an alcoholic beverage is placed by the bottler and in which such beverage is offered for sale to members of the general public.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Health. Includes, but is not limited to, the prevention of accidents.

Person. Any individual, partnership, joint-stock company, business trust, association, corporation, or any other business or legal entity, including a receiver, trustee, or liquidating agent, and also includes any State, any State agency, or any officer or employee thereof.

Sale and distribution. Includes sampling or any other distribution not for sale.

State. Includes any political subdivision of any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, or Johnston Island.

State law. Includes State statutes, regulations and principles and rules having the force of law.

United States. The several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, and Johnston Island.

Use of other terms. Any other term defined in the Alcoholic Beverage Labeling Act and used in this part shall have the same meaning as assigned to it by the Act.

Subpart C—Health Warning Statement Requirements for Alcoholic Beverages

§ 16.20 General.

(a) *Domestic products.* On and after November 18, 1989, no person shall bottle for sale or distribution in the United States any alcoholic beverage unless the container of such beverage bears the health warning statement required by § 16.21. It is the responsibility of the bottler to provide, upon request, sufficient evidence to establish that the alcoholic beverage was bottled prior to November 18, 1989.

(b) *Imported products.* On and after November 18, 1989, no person shall import for sale or distribution in the United States any alcoholic beverage unless the container of such beverage bears the health warning statement required by § 16.21. This requirement does not apply to alcoholic beverages that were bottled in the foreign country prior to November 18, 1989. It is the responsibility of the importer to provide, upon request, sufficient evidence to establish that the alcoholic beverage was bottled prior to such date.

§ 16.21 Mandatory label information.

There shall be stated on the brand label or separate front label, or on a back or side label, separate and apart from all other information, the following statement:

GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects.

(2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

(Authority: Sec. 8001, Pub. L. 100-690, 102 Stat. 4181, 27 U.S.C. 215)

§16.22 General requirements.

(a) *Legibility.* (1) All labels shall be so designed that the statement required by § 16.21 is readily legible under ordinary conditions, and such statement shall be on a contrasting background.

(2) The first two words of the statement required by § 16.21, i.e., "GOVERNMENT WARNING," shall apear in capital letters and in bold type. The remainder of the warning statement may not appear in bold type.

(3) The letters and/or words of the statement required by § 16.21 shall not be compressed in such a manner that the warning statement is not readily legible.

(4) The warning statement required by § 16.21 shall appear in a maximum number of characters (i.e., letters, numbers, marks) per inch, as follows:

Minimum required type size for warning statement	Maximum number of characters per inch
1 millimeter	40
2 millimeters	25
3 millimeters	12

(b) *Size of type.* (1) Containers of 237 milliliters (8 fl. oz.) or less. The mandatory statement required by § 16.21 shall be in script, type, or printing not smaller than 1 millimeter.

(2) Containers of more than 237 milliliters (8 fl. oz.) up to 3 liters (101 fl. oz.). The mandatory statement required by § 16.21 shall be in script, type, or printing not smaller than 2 millimeters.

(3) Containers of more than 3 liters (101 fl. oz.). The mandatory statement required by § 16.21 shall be in script, type, or printing not smaller than 3 millimeters.

(c) *Labels firmly affixed.* Labels bearing the statement required by § 16.21 which are not an integral part of the container shall be affixed to containers of alcoholic beverages in such manner that thay cannot be removed without thorough application of water or other solvents.

(d) *Limited extension of mandatory effective date.* The Director is authorized to grant an extension not to exceed 120 days from the mandatory effective date of paragraphs (a)(2) and (a)(4) of this section November 14, 1990, upon establishing to the satisfaction of the Director that a hardship exists with respect to compliance with such requirements. The extension may only be authorized by the Director for labels which were in compliance with §§ 16.21 and 16.22 of the temporary regulation. Approval of any extension shall not be based solely on cost considerations.

Subpart D—General Provisions

§ 16.30 Certificates of label approval.

Certificates of label/bottle approval or certificates of exemption from label approval on ATF Form 5100.31, issued pursuant to parts 4, 5, and 7 of this chapter for imported and domestically bottled wine, distilled spirits, and malt beverages, shall not be approved by the Director with respect to such beverage bottled on and after November 18, 1989, unless the label for the container of such beverage bears the health warning statement required.

§ 16.31 Exports

The regulations in this part shall not apply with respect to alcoholic beverages that are produced, imported, bottled, or labeled for export from the United States, or for delivery to a vessel or aircraft, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States: *Provided*, That this exemption shall not apply with respect to alcoholic beverages that are produced, imported, bottled, or labeled for sale, distribution, or shipment to members or units of the Armed Forces of the United States, including those located outside the United States.

§ 16.32 Preemption.

No statement relating to alcoholic beverages and health, other than the statement required by § 16.21, shall be required under State law to be placed on any container of an alcoholic beverage, or on any box, carton, or other package, irrespective of the material from which made, that contains such a container.

Signed: December 26, 1989.

Stephen E. Higgins,

Director.

Approved: January 1, 1990.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 90-3500 Filed 2-13-90; 8:45 am]

BILLING CODE 4810-31-M

federal register

Wednesday
February 14, 1990

Part IX

The President

Presidential Determination No. 90-8— Determination Under Section 2(b)(2) of the Export-Import Bank Act of 1945, as Amended: Mozambique

Federal Register

Federal Register
Vol. 55, No. 31
Wednesday, February 14, 1990

Presidential Documents

Title 3—

The President

Presidential Determination No. 90–8

Determination Under Section 2(b)(2) of the Export-Import Bank Act of 1945, as Amended: Mozambique

Memorandum for the Secretary of State

Noting that, pursuant to Section 2(b)(2) of the Export-Import Bank Act of 1945, as amended, 12 U.S.C. 635(b)(2), restrictions were placed against the Export-Import Bank guaranteeing, insuring, extending credit or participating in the extension of credit in connection with the purchase or lease of any product by a number of countries, and noting further that these restrictions may be lifted for specific countries by a Presidential Determination pursuant to Section 2(b)(2)(C), I hereby determine that Mozambique has "ceased to be a Marxist-Leninist country (within the definition of such term in subparagraph (B(i))."

You are authorized and directed to report this Determination to the Congress and publish it in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, January 24, 1990.

[FR Doc. 90–3687
Filed 2–13–90; 10:20 am]
Billing code 3195–01–M

federal register

Wednesday
February 14, 1990

Part X

Department of Commerce

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Relocation of Public Meeting; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council Amendment: Relocation of Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

As indicated below, due to inclement weather, the public meeting of the Pacific Fishery Management Council's Groundfish Management Team (GMT) has been relocated.

From: February 14–16, 1990, at the Mark O. Hatfield Marine Science Center, room MAL 136, Marine Science Drive, Newport, OR.

To: February 14–16, 1990, at the Pacific States Marine Fisheries Commission, 2501 SW. First Avenue, Suite 200, Portland, OR.

All other information previously published (54 FR 3247) remains unchanged. The public meeting will begin at 9 a.m., on February 14 and will adjourn around noon on February 16. For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Portland, OR, 97201; telephone: (503) 326–6352.

Dated: February 13, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–3697 Filed 2–13–90; 11:02 am]

BILLING CODE 3510–22–M

federal register

Wednesday
February 14, 1990

Part XI

The President

Proclamation 6094—Vocational-Technical Education Week, 1990

Federal Register
Vol. 55, No. 31
Wednesday, February 14, 1990

Presidential Documents

Title 3—

The President

Proclamation 6094 of February 12, 1990

Vocational-Technical Education Week, 1990

By the President of the United States of America

A Proclamation

Throughout the history of the United States, the American people have always had the highest regard for practical invention and design. Today we still value the skillful use of tools and technology, as well as the application of innovative ideas. Both are vital to the success of business and industry, and both are vital to a strong economy.

This week, we recognize the importance of vocational and technical education in our Nation's public and private schools. If the United States is to remain a leader in the increasingly competitive global marketplace, it must not only be committed to excellence in the production of goods and services, but also be capable of achieving it. By preparing young men and women for work in highly specialized technical fields, vocational-technical education programs make an important contribution to our Nation's strength and productivity.

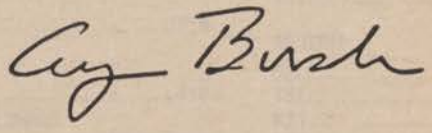
The students and teachers engaged in vocational-technical education know that it holds great rewards for individuals, as well as for the Nation. Through vocational-technical education, aspiring entrepreneurs gain the knowledge and skills they need to establish and maintain their own businesses. Many other students pursue exciting careers in health care, electronics, engineering, and other challenging fields.

Graduates of vocational-technical education programs can take great pride in knowing that they possess the kind of learning and expertise relied upon by millions of people every day. In short, vocational-technical education works—and it works for all of us.

In acknowledgment of the great value of vocational and technical education, the Congress, by Senate Joint Resolution 130, has designated the week of February 11 through February 17, 1990, as "Vocational-Technical Education Week" and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of February 11 through February 17, 1990, as Vocational-Technical Education Week. I invite all Americans to observe this week with appropriate programs, ceremonies, and activities designed to highlight the benefits of quality vocational-technical education.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of February, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 90-3707
Filed 2-13-90; 11:45 am]
Billing code 3195-01-M

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FEDERAL REGISTER PAGES AND DATES, FEBRUARY

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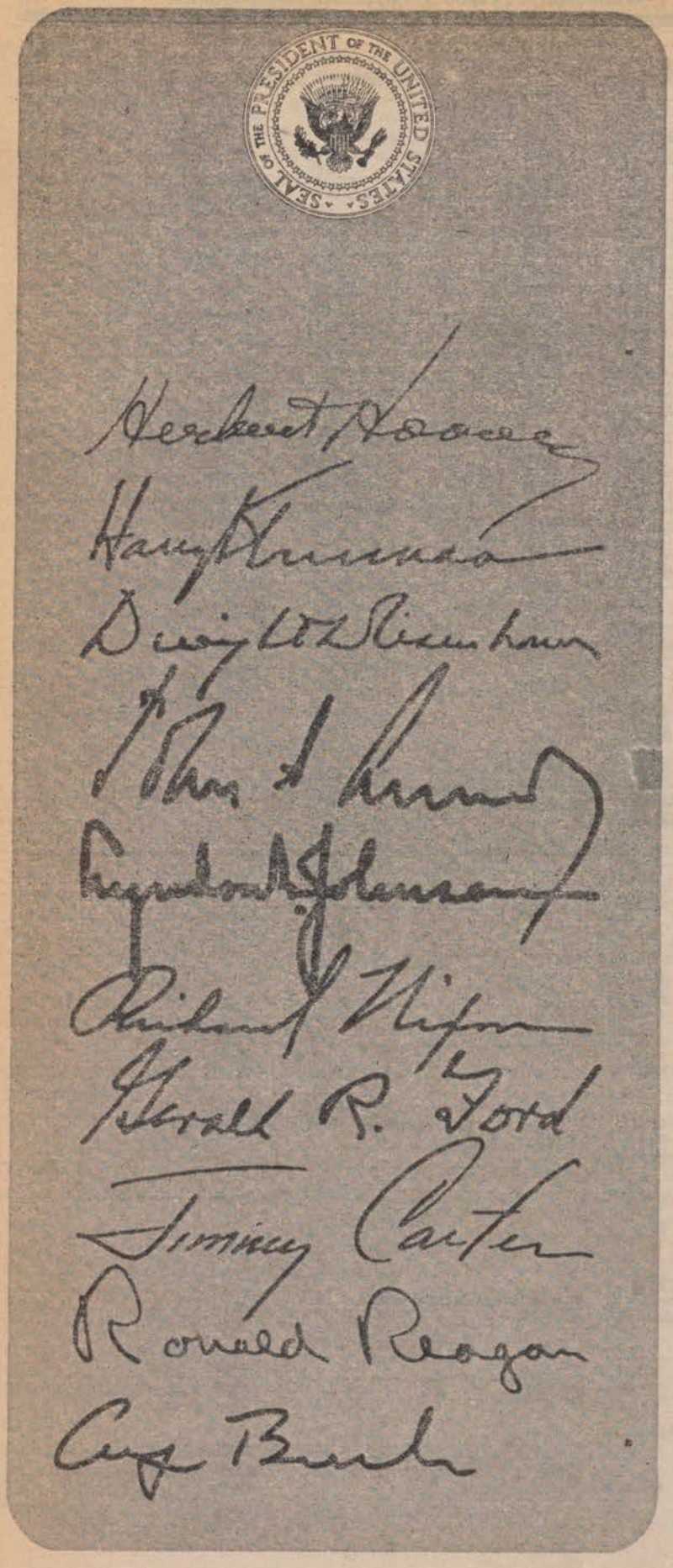

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